

RETURN

TO THE STATE

MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS

IN SENATE

JANUARY 1, 1900



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 126

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

AMERICAN NATIONAL INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

## INDEX

### Proceedings in U. S. C. A., Fifth Circuit:

Original Print

Caption [omitted in printing].....	A	1
Petition for review.....	1	1
Order to file petition.....	4	3
Answer of National Labor Relations Board and request for enforcement of the Board's order.....	5	3
Appendix—Notice to all employees.....	10	6

### Proceedings before National Labor Relations Board, Case No. 16-RC-143:

Petition.....	12	7
First amended petition.....	16	9
Notice of representation hearing.....	20	12
Commerce stipulation.....	22	12
Decision and direction of election.....	24	14
Order amending direction of election.....	27	15
Tally of ballots.....	28	16
Certifications on conduct of election.....	30	17
Certificate of no objections filed.....	39	22
Certification of representatives.....	40	22

### Proceedings before National Labor Relations Board, Case No. 39-CA-33:

Charge against employer.....	41	23
Complaint.....	45	25
Notice of hearing.....	51	29
Answer of respondent American National Insurance Company.....	52	29

Proceedings before National Labor Relations Board, Case  
No. 39-CA-33—Continued

	Original	Print
Motions of respondent, American National Insurance Co., for definite statements.....	58	31
Order designating Wallace E. Royster, Trial Examiner.....	61	33
Request of respondent, American National Insurance Co., for extension of time for filing with the trial examiner proposed findings and conclusions and brief in support of same.....	62	33
Order granting all parties extension of time to file briefs.....	65	35
Proposed findings and conclusions by respondent, American National Insurance Co.....	66	35
Order transferring case to the National Labor Relations Board.....	80	45
Request of respondent, American National Insurance Co. for extension of time for filing exceptions and briefs.....	82	46
Request of respondent, American National Insurance Co., for permission to argue orally before the Board.....	85	47
Orders to counsel granting extension of time for filing.....	87	47
Exceptions of respondent, American National Insurance Co. to the intermediate report filed by the trial examiner.....	88	48
Appendix "A"—Letter to new employees.....	102	57
General Counsel's exceptions to the intermediate report of trial examiner.....	106	59
Union's exceptions to the intermediate report.....	109	60
Letter of Union to Board to enter its usual order against Company, although a collective bargaining agreement had been executed by the Company and Union.....	111	62
Motion of respondent, American National Insurance Co., that the Board make no findings and enter no orders with respect to the 8 (a) (5) phases of the case, etc.....	113	63
Exhibit "A"—Articles of agreement between American National Insurance Co. and Office Employees International Union, etc.....	121	68
Schedule "A"—Anico Wage Promotion Plan.....	140	80
Exhibit "A-1"—Letter, American National Insurance Co. & Office Employees International Union Local #27 addressed to Employees of American National Insurance Co.....	144	82
Decision and order.....	148	85
Appendix—Notice to all employees.....	156	90
Intermediate report and recommended order.....	158	91
Appendix "A"—Notice to all employees.....	183	106
Certificate of National Labor Relations Board.....	184	107
Argument and submission.....	---	111
Opinion, Hutcheson, J.....	---	111
Judgment.....	---	115
Petition for rehearing.....	---	116
Order denying rehearing.....	---	119
Clerk's certificate.....	---	119
Order allowing certiorari.....	199	121

A [Caption omitted.]

IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

No. 13198

AMERICAN NATIONAL INSURANCE COMPANY, PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD

*Petition for review*

Filed April 20, 1950

*To Said Honorable Court:*

American National Insurance Company, Petitioner, being aggrieved by a final order entered April 5, 1950, by the National Labor Relations Board in Case No. 39-CA-33 pending upon its docket, styled In the Matter of American National Insurance Company and Office Employees International Union, A. F. L., Local No. 27 files this its petition for review of such order pursuant to the provisions of Sec. 10 (f) of the Labor Management Relations Act of 1947.

I.

Petitioner is a life insurance company incorporated under the laws of the State of Texas and has its home office in the city of Galveston, Texas. The alleged unfair practices found by the Board in said order to have been committed by Petitioner were committed, if at all, in Galveston, Texas.

II.

2 Petitioner says that on the 13th day of January 1950, having completed their negotiations in respect thereto, it and said Union executed a written contract covering all phases of rates of pay, wages, hours of employment and other terms and conditions of employment covering all of Petitioner's employees within the bargaining unit represented by said Union, as to which any negotiation has ever been requested by the Union, which contract by its express terms remains in full force and effect until the 12th day of July 1951, a copy of which said contract has been furnished to each of said employees under cover letter dated January 23, 1950, signed by both Petitioner and said Union. Said contract and said cover letter will appear in the certified transcript to be filed in this Court.

## III.

Petitioner says that it has not been guilty of the unfair labor practice of refusing to bargain collectively with said Union and that the Board's finding to the contrary in said order is not supported by any substantial evidence in the record of said case viewed as a whole.

## IV.

Petitioner further says that the net effect of said order is to deprive it, without due process of law, in its future bargaining and contract negotiations with said Union of certain rights, including the right to refuse to agree to arbitration, which are guaranteed to it by law and particularly by the Labor Management Relations Act of 1947 and Sec. 8 (d) thereof.

## 3

## V.

Petitioner further says that the net effect of said order is to require of Petitioner in any future contract negotiations with said Union that it agree to arbitration in violation of its rights under law, and particularly under the Labor Management Relations Act of 1947, and Sec. 8 (d) thereof.

Wherefore, Petitioner respectfully prays of this Honorable Court that it direct the Board to file with the Clerk of this Court, in accordance with applicable rules of this Court, certified copy of the entire record in such case.

In view of Sec. 10 (g) of the Labor Management Relations Act of 1947, Petitioner further respectfully prays for the entry by this Honorable Court of such order or orders as may be needed to operate as a stay of the Board's said order pending final determination of the review sought herein.

Petitioner further prays for all other relief to which it may show itself lawfully and justly entitled.

Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
Attorney for Petitioner,

*903 Medical Arts Bldg., Galveston, Texas.*

Of Counsel:

DIBRELL, DIBRELL & GREER,

*903 Medical Arts Bldg., Galveston, Texas.*

4 Certificate of service (omitted in printing).

In the United States Court of Appeals

[Title omitted.]

*Order to file petition*

Filed April 20, 1950

A petition for review of the Order of the National Labor Relations Board entered on April 5, 1950, in the proceedings entitled "In the Matter of American National Insurance Company and Office Employees International Union, A. F. L., Local No. 27", Case No. 39-CA-33, having been presented to this Court;

5 It Is Ordered that said petition be filed and docketed as of April 20, 1950; and

It Is Further Ordered that a copy of this Order and the said petition be forthwith served on the National Labor Relations Board, and that said Board, upon service of such copy, forthwith certify and file in this Court a transcript of the entire record of the aforesaid proceeding in conformity with Rule 38 of this Court.

New Orleans, Louisiana, this 20th day of April 1950.

(Signed) WAYNE G. BORAH,  
*United States Circuit Judge.*

In the United States Court of Appeals

[Title omitted.]

*Answer of National Labor Relations Board to petition for review of its order and request for enforcement of said order*

Filed May 29, 1950

*To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:*

6 Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, et seq.), hereinafter called the Act, files this answer to the petition for review of an order issued by the Board against American National Insurance Company, petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in paragraph I of the petition for review.

2. As to paragraph II, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

3. The Board denies each and every allegation contained in paragraphs III, IV, and V of the petition to review.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

Further answering, the Board, pursuant to Section 10 (e) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on April 5, 1950, in the proceedings designated on the records of the Board as Case No. 39-CA-33, entitled: "In the Matter of American National Insurance Company and Office Employees International Union, AFL, Local No. 27."

5. In support of this request for enforcement of its order, the Board respectfully shows:

7 (a) American National Insurance Company, a Texas corporation, is engaged in business at Galveston, Texas. This Court has jurisdiction of the Petition to Review herein and of the request for enforcement by virtue of Sections 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on April 5, 1950, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner, and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders the American National Insurance Company, Galveston, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all of its employees at its Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional em-

ployees, department heads, and all other supervisors as defined in the Act, by insisting as a condition of agreement, that the  
8 said Union agree to a provision whereby the Respondent reserves to itself the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

(b) Interrogating employees concerning their union membership and sympathies and union activities; threatening to sell its business before it would sign a contract with the above-named Union; warning its employees that periodic wage increases and privileges would be discontinued if the said Union succeeded in its organizational campaign; requesting its employees to solicit anti-union votes in any election to determine the bargaining representative of its employees; and in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist Office Employees International Union, A. F. L., Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all its employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment.

9 (b) Post at its office in Galveston, Texas, copies of the notice attached hereto as an Appendix.<sup>1</sup> Copies of such notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

<sup>1</sup> In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "Decree of the United States Court of Appeals Enforcing."

(c) Notify the Regional Director for the Sixteenth Region (Fort Worth, Texas) in writing, within ten (10) days from the date of receipt of this Order, what steps the Respondent has taken to comply herewith.

(c) On April 5, 1950, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this proceeding to be served upon petitioner, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order set forth hereinabove, a decree denying the petition to review and enforcing in whole said Order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply herewith.

NATIONAL LABOR RELATIONS BOARD,

By (S.) A. Norman Somers,  
(A. NORMAN SOMERS),

*Assistant General Counsel.*

Dated at Washington, D. C., this 26th day of May 1950.

### *Appendix*

#### *Notice to All Employees:*

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not refuse to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all our employees at our Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act, by insisting, as a condition of agreement, that the said union agree to a provision whereby we reserve to ourselves the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

11 We Will bargain collectively, upon request, with the above-named labor organization as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We Will Not interrogate our employees concerning their union membership and sympathies and union activities; threaten to sell our business before we would sign any contract with the above-named union; warn our employees that periodic wage increases and privileges would be discontinued if the above-named union succeeded in its organizational campaign; request our employees to solicit anti-union votes in any election to determine a bargaining representative of our employees; or in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist Office Employees International Union, A. F. L., Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (5) of the Act.

AMERICAN NATIONAL INSURANCE COMPANY,  
(Employer),

By \_\_\_\_\_,  
(Representative), (Title).

Dated \_\_\_\_\_

12 This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before National Labor Relations Board

*Petition*

(Place an X in the box opposite the description which expresses the purpose of this Petition) for

- ☒ [x] Certification of Representatives (Individual, group, organization) \_\_\_\_\_ (RC)
- ☐ [ ] Certification of Representatives (Employer) \_\_\_\_\_ (RM)
- ☐ [ ] Decertification of Representatives \_\_\_\_\_ (RD)
- ☐ [ ] Authority for Bargaining Relative to Union Security \_\_\_\_\_ (UA)
- ☐ [ ] Rescinding Authority for Union Security Previously Granted \_\_\_\_\_ (UD)

Do Not Write In This Space.

Case No. 16-RC-143.

Date Filed 5-3-48.

9 (f), (g), (h) cleared L. P. 8-19-48.

- 13 Petitioner alleges that the following circumstances obtain and requests that the National Labor Relations Board proceed under its proper authority.

(Answer all of the following, using "none" if the situation warrants. Only an Employer Petitioner answers 10 and he does not answer 5 (b), 12, 13, 14, or 15).

1. Name of employer American National Insurance Company.
2. Address(es) of establishment(s) involved (Street) Anico Bldg. (City) Galveston (State) Texas.
3. Nature of business Life Insurance.
4. Description of the Unit involved.

Included All IBM Machine Operators, Junior Clerks, File Clerks, Mail Clerks, Account Clerks, Control Clerks, B Clerks, Commission Clerks, General Clerks, Stockroom Clerks, Premium Clerks, Statistical Clerks, Clerk-Typists, Typists, Stenographers, Addressographer Operators, Comptometer Operators, Bookkeepers, Assistant Supervisors, Jr. Supervisors, and other Classifications that could come within this bargaining unit.

Excluded—Secretaries to Department Heads and Executives; Agents, Departmental Heads, Supervisors with the Authority to hire and fire and other supervision who can recommend dismissal.

5. (a) Number of employees in Unit 660.
- 14 (b) Employees supporting this Petition: Number 430; Percentage App. 65%.\*

6. Name and affiliation of recognized or certified bargaining agent none.

7. Date of such recognition None, or certification None.

8. Date on which Union Security authority was granted None.

9. Expiration date of current contract, if any None.

10. Names of parties who have claimed recognition as representatives. Give date of each claim. (Only Employer Petitioner answers this question).

----- Date -----

----- Date -----

11. Names and addresses of any other interested parties None.

12. (a) Has the Petitioner notified the employer of claim that a question concerning representation has arisen? No.

(b) Has the employer failed to recognize Petitioner? No.

13. (Paragraphs 13, 14, and 15 apply only if the Petition is filed by a labor organization) Petitioner has complied with Section 9 (f) (A), 9 (f) (B) (1), and 9 (g) of the National Labor Relations Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number 1166. The financial data filed with the Secretary of Labor is for the fiscal year ending Dec. 31, 1947. A certificate has been filed with the National Labor Relations Board in accordance with Section 9 (f) (B) (2) stating the method employed by Petitioner in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

14. Each of the officers of the union has executed a noncommunist affidavit as required by Section 9 (h) of the Act.

15. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9 (f), (g) and (h) of the Act.

Petitioner (State full name and affiliation, if any) Office Employees International Union, American Federation of Labor.

By H. G. WILSON,

(Signature of representative or person filing petition.)

O. E. I. U. Rep.,

(Title, if any)

Address: (Street) 1115 1/2 Ave. B. (City) (State) Galveston, Tex. (Telephone number) 29593.

[Duly sworn to by Walter B. Russel furat omitted in printing.]

16 \*Petitioner should submit with this petition, for examination by Board Agents, such documentary evidence which it has in its possession in support of this petition, together with an alphabetical list of the names of persons on such evidence. (Submit original and Four Copies of this Petition.)

Before National Labor Relations Board

First amended petition

(Place an X in the box opposite the description which expresses the purpose of this Petition) for

- [x] Certification of Representatives (Individual, group, organization) ----- (RC)  
 [ ] Certification of Representatives (Employer) ----- (RM)  
 [ ] Decertification of Representatives ----- (RD)

[ ] Authority for Bargaining Relative to Union Security (UA)  
 [ ] Rescinding Authority for Union Security Previously  
 Granted ----- (UD)

Do Not Write In This Space:

17 Case No. 16-RC-143.

Date Filed 6-11-48.

9 (f), (g), (h) cleared ML 8-19-48.

Petitioner allèges that the following circumstances obtain and requests that the National Labor Relations Board proceed under its proper authority.

(Answer all of the following, using "none" if the situation warrants. Only an Employer Petitioner answers 10 and he does not answer 5 (b), 12, 13, 14, or 15).

Cy Wash 6/11/48 ML

1. Name of employer American National Insurance Company.

2. Address(es) of establishment(s) involved (Street) Anico Bldg. (City) Galveston, (State) Texas.

3. Nature of business Life Insurance.

4. Description of the Unit involved:

Included All office and clerical employees of the Home Office of the Company at Galveston, Texas.

Excluded Secretaries to Department Heads and Executives, Agents, Departmental Heads, all Supervisors as defined in the Act, and all other employees.

5. (a) Number of employees in Unit 660.

18 (b) Employees supporting this Petition: Number 430;  
 Percentage 65%.

6. Name and affiliation of recognized or certified bargaining agent None.

7. Date of such recognition -----, or certification -----

8. Date on which Union Security authority was granted

9. Expiration date of current contract, if any

10. Names of parties who have claimed recognition as representatives. Give date of each claim. (Only Employer Petitioner answers this question).

Date

Date

11. Names and addresses of any other interested parties None.

12. (a) Has the Petitioner notified the employer of claim that a question concerning representation has arisen? No

(b) Has the employer failed to recognize Petitioner? No.

13. (Paragraphs 13, 14, and 15 apply only if the Petition is filed by a labor organization) Petitioner has complied with Section 9 (f) (A), 9 (f) (B) (1), and 9 (g) of the National Labor Relations Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number 1166. The financial data filed with the Secretary of Labor is for the fiscal year ending 12-31-47. A certificate has been filed with the National Labor Relations Board in accordance with Section 9 (f) (B) (2) stating the method employed by Petitioner in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

14. Each of the officers of the union has executed a non-communist affidavit as required by Section 9 (h) of the Act.

15. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9 (f), (g) and (h) of the Act.

Petitioner (State full name and affiliation, if any) Office Employees International Union, A. F. of L.

By H. G. WILSON,

(Signature of representative or person filing petition)

Representative

(Title, if any)

Address: (Street) 1115 1/2 Ave. "B". (City) (State) Galveston, Texas. (Telephone number) 2-9593.

[Duly sworn to by John W. Thomas  
jurat omitted in printing.]

20 \* Petitioner should submit with this petition, for examination by Board Agents, such documentary evidence which it has in its possession in support of this petition, together with an alphabetical list of the names of persons on such evidence.

(Submit Original and Four Copies of this Petition.)  
Before National Labor Relations Board

IN THE MATTER OF: AMERICAN NATIONAL INSURANCE CO. and  
OFFICE EMPLOYEES INTERNATIONAL UNION, AFL  
Case No. 16-RC-145

*Notice of representation hearing.*

The Petitioner, above named, having heretofore filed a Petition pursuant to section 9 (c) of the National Labor Relations Act, 49 Stat. 449, copy of which Petition is hereto attached, and it appearing that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

You Are Hereby Notified that, pursuant to section 9 (c) of the Act, on the 25th day of June, 1948, at 10:00 in the forenoon in the United States Post Office Building in the City of Galveston, Texas, a hearing will be conducted before a hearing officer of the National Labor Relations Board upon the question of representation  
21 affecting commerce which has arisen, at which time and place the parties will have the right to appear in person or otherwise, and give testimony.

In Witness Whereof, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Notice of Representation Hearing to be signed by the Regional Director for the Sixteenth Region on this 25th day of June 1948.

EDWIN A. ELLIOTT,

*Regional Director,  
National Labor Relations Board.*

(Address): 1101 T. & P. Building, Fort Worth 2, Texas.

[Affidavit and Return Receipts omitted.]

22 Before National Labor Relations Board  
[Title omitted.]

*Commerce stipulation*

It is hereby stipulated and agreed by and between the parties hereto that:

American National Insurance Company is a Texas corporation, having its offices and principal place of business in Galveston, Texas, is engaged in soliciting and issuing ordinary and industrial life insurance policies and annuity contracts, and in the investments of its funds in real estate mortgages and a variety of securities. The company conducts its business, including the writing of insurance, the collection of premiums, and the payment of benefits, in 28 states and the District of Columbia, including the states of Texas and Oklahoma. The company's business, including the industrial agency or department, is directed by officers and directors located in the principal office in Galveston, Texas, herein referred to as the home office. All terms and conditions of insurance policies are determined, investigations are made or caused to be made and considered, and applications for policies and loans are ultimately acted upon at the home office. All policies and checks for benefits are issued by the home office and transmitted from there through the district offices to

21 beneficiaries or policy holders, except in some isolated instances where the checks are sent direct to beneficiaries or policy holders residing in areas remote from any district office. The various states in which industrial agencies are maintained are divided into districts for operational purposes, and district offices are maintained at principal cities within the 28 states and the District of Columbia. A district superintendent, who reports to the company's home office, is in charge of each district office. In the district offices, in addition to managerial, supervisory, and clerical personnel, the company employs approximately 2,000 industrial agents to solicit applications for industrial insurance, collect premiums, and service policies. On December 31, 1947, the company's total insurance in force was in excess of \$1,000,000,000.00, of which approximately one-third was ordinary and two-thirds industrial. On the same date the Respondent's total assets amounted to in excess of \$200,000,000.00, including United States bonds of more than \$50,000,000.00, Canadian stocks and bonds of more than \$3,000,000.00, State, county, and municipal bonds throughout various states of more than \$13,000,000.00, railroad bonds of more than \$10,000,000.00, public utility bonds of more than \$20,000,000.00, industrial and other bonds of more than \$6,000,000.00, first mortgage loans throughout various states of more than \$25,000,000.00, and real estate in various states of more than \$3,000,000.00.

24 The company admits that it is engaged in interstate commerce, within the meaning of the Act as amended.

Dated:

AMERICAN NATIONAL INSURANCE  
COMPANY,  
By W. B. HANDLEY,  
*Special Counsel.*  
OFFICE EMPLOYEES INTERNATIONAL  
UNION, AFL,  
By COMBS & DIXIE,  
By WARNER J. BROCK.

Approved:

Elmer Davis,  
(ELMER DAVIS),  
*Regional Attorney,*  
*National Labor Relations Board.*

Before National Labor Relations Board

[Title omitted.]

*Decision and direction of election*

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board.

25 The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization(s) named below claim(s) to represent employees of the Employer.

3. A question of representation exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees employed at the Employer's Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act.

## DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Section 203.61 and 203.62 of the National Labor Relations Board's Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by Office Employees International Union, A. F. L.

Signed at Washington, D. C., this 30th day of July 1948.

PAUL M. HERZOG,  
*Chairman.*

JOHN M. HOUSTON,  
*Member.*

JAMES J. REYNOLDS,  
*Member.*

(National Labor Relations Board Seal.)

NATIONAL LABOR RELATIONS BOARD.

27 Before National Labor Relations Board

[Title omitted.]

*Order amending direction of election*

The Board having on July 30, 1948, issued a Decision and Direction of Election in the above-entitled proceeding,

It Is Hereby Ordered that the aforesaid Direction of Election be amended by striking therefrom the words "Office Employees International Union, AFL," and substituting therefor the words, "Office Employees International Union, Local 27, AFL."

Dated, Washington, D. C., August 10, 1948.

By direction of the Board:

FRANK M. KLEILER,  
*Executive Secretary.*

[Title omitted.]

*Tally of ballots*

Date issued August 19, 1948

## TYPE OF ELECTION BOARD ORDERED

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- |  |     |
|--|-----|
| 1. Approximate number of eligible voters-----  | 619 |
| 2. Void ballots-----   | 2   |
| 3. Votes cast for Office Employees International Union,<br>Local 27, AFL-----  | 305 |
| 4. Votes cast for-----   |     |
| 5. Votes cast for-----   |     |
| 6. Votes cast against participating labor organization(s)-----   | 244 |
| 7. Valid votes counted (sum of 3, 4, 5, and 6)-----  | 549 |
| 8. Challenged ballots-----   | 48  |
| 9. Valid votes counted plus challenged ballots (sum of 7<br>and 8)-----  | 597 |
| 10. Challenges are (not) sufficient in number to<br>affect the results of the election,                              |     |
| 11. A majority of the valid votes has (not) been cast for<br>Office Employees International Union, Local 27,<br>AFL. |     |

For the Regional Director:

JOHN F. FUNKE.

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Office Employees International Union, Local 27, AFL,  
 GERTRUDE REAGAN,

For

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For American National Insurance Company,  
 P. G. GALCUAN,

For

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30 Before National Labor Relations Board

*Certification on conduct of election*

Name of employer American National Insurance Company  
 Case No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas, (5th  
 Floor, Medical Arts Building).

The undersigned acted as agents of the Regional Director and  
 as authorized observers, respectively, in the conduct of the bal-  
 loting at the above time and place.

We Hereby Certify that such balloting was fairly conducted,  
 that all eligible voters were given an opportunity to vote their  
 ballots in secret, and that the ballot box was protected in the inter-  
 est of a fair and secret vote.

For the Regional Director, 16th Region,

JANE NICHOLSON,

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For

31 For American National Insurance Company,  
 ROSALIE MAZZARRA,

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For Office Employees International Union, Local 27, AFL,  
GERTRUDE REAGAN,

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Certification On Conduct of Election

United States of America.

National Labor Relations Board

Name of employer American National Insurance Company  
Case No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas (8th  
Floor, American National Building).

The undersigned acted as agents of the Regional Director and  
as authorized observers, respectively, in the conduct of the bal-  
loting at the above time and place.

32 We Hereby Certify that such balloting was fairly con-  
ducted, that all eligible voters were given an opportunity  
to vote their ballots in secret, and that the ballot box was pro-  
tected in the interest of a fair and secret vote.

For the Regional Director, 16th Region,

E. M. SUTHERLAND,

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For

For American National Insurance Company,

M. S. KELLUM,

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For Office Employees International Union, Local 27, AFL,

MARIE KWACEVICH,

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33

Certification On Conduct Of Election

United States of America

National Labor Relations Board

Name of employer American National Insurance Company  
Case No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas, 3rd  
Floor, American National Building.

The undersigned acted as agents of the Regional Director and  
as authorized observers, respectively, in the conduct of the ballot-  
ing at the above time and place.

We Hereby Certify that such balloting was fairly conducted,  
that all eligible voters were given an opportunity to vote their  
ballots in secret, and that the ballot box was protected in the in-  
terest of a fair and secret vote.

For the Regional Director, 16th Region,

JOHN F. WHITE,

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For

34

For American National Insurance Company,

MARGANT CANOWAY,

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For Office Employees International Union, Local 27, AFL,

PAULINE SCHUSTER,

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Certification On Conduct Of Election

United States of America

National Labor Relations Board

Name of employer American National Insurance Company Case  
No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas (10th Floor, American National Building).

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

35 We Hereby Certify that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For the Regional Director, 16th Region,

ELMER DAVISON,  
JOSEPH A. BEETLER,

For

For American National Insurance Company,

MRS. CONOADENA HANSON,

For Office Employees International Union, Local 27, AFL,

MISS GLADWYN MUEHE,

36

Certification On Conduct Of Election

United States of America

National Labor Relations Board

Name of employer American National Insurance Company  
Case No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas (4th Floor, American National Building).

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

We Hereby Certify that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their

ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For the Regional Director, 16th Region,

SULTON J. BOYD,

For

37 For American National Insurance Company,

LILLIAN HYKEL,

For Office Employees International Union, Local 27, AFL,  
EMMA LOUISE MOORE,

Certification On Conduct Of Election

United States of America

National Labor Relations Board

Name of employer American National Insurance Company  
Case No. 16-RC-143.

Date of election August 19, 1948, Place Galveston, Texas, "2nd Floor, American National Building".

The undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

38 We Hereby Certify that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For the Regional Director, 16th Region,

CLIFFORD W. POTTER,

For

For American National Insurance Company,

P. L. GALMAN,

For Office Employees International Union, Local 27, AFL,

E. FAIR,

39

Before National Labor Relations Board

*Certificate of no objections filed*

Date: August 27, 1948

[Title omitted.]

This is to certify that no objections to the conduct of the election or conduct affecting the results of the election held in the above case have been filed within the 5-day period provided for in the Rules and Regulations.

Edwin A. Elliott,  
(EDWIN A. ELLIOTT),  
Regional Director.

40

Before National Labor Relations Board

[Title omitted.]

*Certification of Representatives*

An election having been conducted in the above matter pursuant to the Board's direction,<sup>2</sup> and in accordance with the Rules and

<sup>2</sup> Decision and Direction of Election dated July 30, 1948, and Order Amending Direction of Election dated August 10, 1948.

Regulations of the Board, and it appearing from the Tally of Ballots that a collective bargaining representative has been selected, and no objections having been filed by any of the parties within the time provided therefor,

It Is Hereby Certified that Office Employees International Union, Local 27, AFL has been designated and selected by a majority of the employees of the above-named Employer, in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

41 Dated, Washington, D. C., this 2nd day of September, 1948.

By direction of the Board:

Sep. '48

FRANK M. KLEHLER,  
*Executive Secretary.*

(National Labor Relations Board Seal.)

Before National Labor Relations Board

*Charge against employer*

Budget Bureau No. 64-R00 1. 1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Do Not Write In This Space.

Case No. 39-CA-33.

Date Filed January 28, 1949.

Compliance Status Checked By: 3/17/49 L. P.

Important—Read Carefully:

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any na-

42 tional or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File in original and 4 copies of this charge with the NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring.

1. Employer Against Whom Charge Is Brought:

Name of employer American National Insurance Company.

Address of establishment (Street and No., City, Zone and State) Galveston, Texas.

No. of workers employed Approx. 650 in Unit Involved.

Nature of Employer's Business Selling and servicing Insurance policies.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) Subsections (1) and (List subsections) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets).

On January 5, 1949, it by its officers, agents and employees terminated the employment of Emma Moore, an "A" File Clerk 43 in the Ordinary Application File Room, because of her membership and activities in behalf of Office Employees International Union, A. F. L., Local 27, a labor organization, and at all times since such date it has refused and does now refuse to employ the above named employee.

On January 10, 1949, and at all times thereafter, it, by its officers, agents, and employees, refused to bargain collectively with the authorized representatives of Office Employees International Union, A. F. L., Local 27, chosen by a majority of its employees in its Home Office at Galveston, Texas, to represent them for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the acts set forth in the paragraphs above, and by other acts and conduct on the part of its officers, agents and employees, such as:

1. Interrogating employees re union activities;

2. Discouraging non-union employees from becoming union members;

3. Inducing union members to cease membership in the Union; it, by its officers, agents and employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

4. Full name of labor organization, including local name and number, or person filing charge Office Employees International Union, A. F. L.—Local No. 27.

44 4. Address (Street and No., City, Zone, and State) 1115½ Avenue "B"—Galveston, Texas.  
Telephone No. 2-9593.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Office Employees International Union, A. F. L.

6. Address of national or international, if any (Street and No., City, Zone, and State) 625 Bond Building, Washington, D. C.  
Telephone No. -----

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

A. G. Wilson,

(ALBERT G. WILSON),

(Signature of representative or person filing charge)

President and Business Agent, Local 27.

(Title, if any)

(Date) January 28, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

GPO-WFSO 12-2-48-75,000-26-353.

(Affidavit omitted.)

45 Before National Labor Relations Board

Case No. 39-CA-33

IN THE MATTER OF: AMERICAN NATIONAL INSURANCE COMPANY and  
OFFICE EMPLOYEES INTERNATIONAL UNION, A. F. L., LOCAL  
No. 27

### Complaint

It having been charged by Office Employees International Union, A. F. L., Local No. 27, 1115½ Avenue B, Galveston, Texas, under date of January 28, 1949, that American National Insurance Company, Galveston, Texas, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act, copy of said Charge having been served by

registered mail on the respondent on January 31, 1949, the General Counsel for the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the Sixteenth Region of the Board, hereby alleges as follows:

1. Respondent is and has been since 1905 a corporation duly organized under and existing by virtue of the laws of the State of Texas, having its principal office and place of business in the City of Galveston, County of Galveston, and State of Texas, and branch offices in thirty (30) other states and the District of Columbia, and is now and has been at all the times herein mentioned continuously engaged at said places of business, in soliciting and issuing ordinary and industrial life insurance policies and annuity contracts, and in the investment of funds in real estate mortgages and a variety of securities.

2. Respondent, in the course and conduct of its business causes a continuous stream of intercourse among the states of the United States and from the State of Texas to other states of the United States and from states other than the State of Texas to the Company's home office in the State of Texas, composed of collections of premiums, payments of policy obligations and countless documents and communications which are essential to the negotiation and execution of policy contracts. Respondent, in the course and conduct of its business operations, is manifestly dependent upon the constant employment of interstate communication and transportation facilities. The Respondent, in the course and conduct of its business operations, invests funds and maintains various and sundry financial investments in the several states of the United States.

3. Office Employees International Union, A. F. L., Local No. 27, hereinafter referred to as the Union is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

4. Respondent did on or about January 5, 1949, discharge Emma Moore, employed at its said Galveston, Texas, office.

5. Respondent has, since the date of discharge listed above in paragraph 4, failed to, refused to and continues to refuse to reinstate the employee named above to her former or substantially equivalent position or employment.

6. Respondent did discharge and refuse or fail to reinstate the employee named above in paragraph 4 for the reason that she joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

7. In order to insure to the employees of respondent the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the Act, all em-

employees employed at the respondent's Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subdivision (b), of the Act.

8. On or about August 19, 1948, a majority of the employees of respondent in the unit described above in paragraph 7, designated or selected the Union as their representative for the purposes of collective bargaining with respondent and at all times since that date the Union has been the representative for the purposes of collective bargaining of a majority of the employees in said unit and, by virtue of Section 9, subdivision (a), of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

48 9. On or about November 13, 1948, the Union requested respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment with the Union as the exclusive representatives of all the employees of respondent in the unit described above in paragraph 7.

10. On or about November 30, 1948, and at all times thereafter, respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in paragraph 7.

11. Respondent, through its officers, agents, and employees, from on or about July 28, 1948, to date, has interrogated its employees concerning their union affiliations; has threatened and warned its employees to refrain from assisting, becoming members of or remaining members of, the Union, in that, among other things:

A. C. A. Axelson, a supervisor, interrogated an employee as to her union membership and activities, in October 1948.

B. In December 1948, L. H. Peacock, a supervisor, interrogated an employee as to union activities.

C. In January 1949, L. H. Peacock, interrogated an employee as to union activities and membership and told her that but for the Union he could get her a raise.

D. On August 1948, L. H. Peacock interrogated an employee as to union activities.

E. On August 25, 1948, L. H. Peacock asked an employee what had taken place at a union meeting.

49 F. In February 1949, L. H. Peacock interrogated an employee as to union activities.

G. In September 1948, L. H. Peacock asked an employee to tell other employees that they would not make as much money when the Union came in.

H. In December 1948, L. H. Peacock told an employee she would have better advantages outside of the Union.

12. By the Acts described above in paragraphs 4 and 5, for the reasons set forth above in paragraph 6, respondent did discriminate and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employee named above in paragraph 4 and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a), subdivision (3), of the Act.

13. By the acts described above in paragraph 10, respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a), subdivision (5), of the Act.

14. By the acts described above in paragraphs 4, 5, 10 and 11, and by each of said acts, respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a), subdivision (1) of the Act.

15. The activities of respondent, described above in paragraphs 4, 5, 10 and 11, occurring in connection with the operations of respondent, described above in paragraphs 1 and 2 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7), of the Act.

Wherefore, the General Counsel of the National Labor Relations Board has caused this complaint to be signed and issued by the Regional Director for the Sixteenth Region, on the 30th day of June 1949, against American National Insurance Company, respondent herein.

Edwin A. Elliott,  
(EDWIN A. ELLIOTT),  
Regional Director,

*National Labor Relations Board, Sixteenth Region.*

(Charge against Employer omitted.)

51 Before National Labor Relations Board

[Title omitted.]

Case No. 39-CA-33

*Notice of hearing*

Please Take Notice that on the 26th day of July 1949, at ten o'clock in the forenoon in the U. S. Post Office Building in the City of Galveston, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that, pursuant to section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

52 In Witness Whereof the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Regional Director for the Sixteenth Region on this 30th day of June 1949.

[SEAL]

EDWIN A. ELLIOTT,

*Regional Director,**National Labor Relations Board.*

(Address) : 1101 T &amp; P Building, Fort Worth 2, Texas.

(Affidavit and Return Receipt omitted.)

\* \* \* \* \*

Before National Labor Relations Board

[Title omitted.]

Case No. 39-CA-33

*Answer of respondent American National Insurance Company*

Respondent respectfully moves the Trial Examiner to require of Complainant, National Labor Relations Board, a more definite statement in respect to paragraph numbered 10 contained in said complaint filed against it for the reason

53

that said paragraph numbered 10 contains a pure conclusion on the part of complainant and is wholly lacking in the allegation of any facts or particulars as to how or in what respect Respondent has since November 30, 1948, refused to and continues to refuse to bargain collectively with the Union, which facts render it impossible for Respondent to prepare and file a responsive pleading to such portion of said complaint or to prepare its defense to said Section 10 of said complaint.

1. Respondent admits the allegations contained in paragraph numbered 1 of the complaint.

2. Respondent admits the allegations contained in paragraph numbered 2 of the complaint.

3. Respondent admits the allegations contained in paragraph numbered 3 of the complaint.

4. Respondent admits the allegation contained in paragraph numbered 4 of the complaint.

5. Respondent denies the allegation contained in paragraph numbered 5 of the complaint.

6. Respondent denies the allegations contained in paragraph numbered 6 of the complaint.

7. Respondent admits the allegations contained in paragraph numbered 7 of the complaint.

8. Respondent admits the allegations contained in paragraph numbered 8 of the complaint.

54 9. Respondent admits the allegations contained in paragraph numbered 9 of the complaint.

10. Respondent denies the allegations contained in paragraph numbered 10 of the complaint.

11. Being without sufficient information as to the full content, particularities and detail of certain statement heretofore made by C. A. Axelson and L. H. Peacock, both supervisory employees of Respondent, to certain attorneys for the National Labor Relations Board and, therefore, as to the correctness of the allegations contained in paragraph numbered 11, subsections A through H, of the complaint in respect to conformity with such prior statements, Respondent neither admits nor denies the allegations contained in said paragraph numbered 11, subsections A through H thereof.

Respondent does, however, deny that any other of its supervisory employees, or executive officers, has at any time interrogated any of the employees of the company within the bargaining unit concerning their union affiliations or has threatened or warned any of such employees to refrain from assisting, becoming members of, or remaining members of the union, and further denies that any statements made to or interrogation of any employee by either the said Axelson or the said Peacock constituted or could reasonably be construed to constitute any threat or warn-

ing to any such employee to refrain from assisting, becoming members of, or remaining members of the union.

12. Respondent denies the allegations contained in paragraph numbered 12 of the complaint.

55 13. Respondent denies the allegations contained in paragraph numbered 13 of the complaint.

14. Respondent denies the allegations contained in paragraph numbered 14 of the complaint.

15. Respondent denies the allegations contained in paragraph numbered 15 of the complaint.

16. Respondent denies the allegations contained in paragraph numbered 16 of the complaint.

Wherefore, Respondent, American National Insurance Company, respectfully prays that upon the hearing to be conducted before a duly designated Trial Examiner of the National Labor Relations Board to be held in accordance with the Notice of Hearing attached to said complaint, that said complaint be in all things dismissed.

Louis J. Dibrell,

(LOUIS J. DIBRELL),

Attorney for Respondent,

American National Insurance Company,

903 Medical Arts Bldg., Galveston, Texas.

Of Counsel:

DIBRELL, DIERELL, & GREER,

903 Medical Arts Bldg., Galveston, Texas.

56 [Duly sworn to by W. L. Vogler, jurat omitted in printing.]

Certificate of service (omitted in printing).

58 Before National Labor Relations Board

[Title omitted.]

Case No. 39-CA-33

*Motions of respondent, American National Insurance Company,  
for more definite statements*

*To the Honorable Trial Examiner:*

I.

Respondent, American National Insurance Company, files this, its Motion to require of the Regional Director a more definite statement in respect to paragraph numbered 10 of the Complaint filed against it herein, for the reason that said paragraph 10 states and contains a bare, unsupported conclusion both of law and of fact not predicated upon any fact or facts stated in such paragraph 10 or elsewhere in said Complaint, for which reason Respondent is wholly unable to intelligently and properly pre-

pare and presents its defense to the Charge contained in such paragraph.

In this connection, Respondent respectfully requests that the Regional Director be required to plead specific facts as to what acts or conduct on the part of Respondent constitute the refusal and continuation of refusal on Respondent's part to bargain collectively with the Union, as is complained of in said paragraph.

Respondent, American National Insurance Company, files this, its Motion to require of the Regional Director a more definite statement in respect to paragraph numbered 13 of the Complaint, wherein it is alleged "by the acts described in paragraph 10 Respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of section 8 (A), Subdivision (5) of the Act," for the reason that there are no "acts" set forth in said paragraph 10, but rather a mere conclusion of law and fact as is complained of in the preceding motion for more definite statement.

Respondent prays that said paragraph 13 be stricken from the Complaint, or the Regional Director be required to plead with definiteness and particularity the "acts" leading to the conclusions complained of therein.

### III.

Respondent, American National Insurance Company, files this, its Motion to require of the Regional Director a more definite statement in respect to paragraph numbered 14 of the Complaint insofar as the conclusion of law and fact stated therein is based upon "acts" described in paragraph numbered 10 of the Complaint, for the reason that there are no "acts" set forth in said paragraph 10, but rather a mere conclusion of law and fact as is complained of in the preceding Motion as to paragraph 10 for more definite statement.

Respondent prays that said paragraph 14 insofar as it is predicated on paragraph 10 be stricken from the Complaint, or the Regional Director be required to plead with definiteness and particularity the "acts" leading to the conclusions complained of therein predicated on paragraph 10.

Respectfully submitted.

Louis J. Dibrell,  
(LOUIS J. DIBRELL),

*Attorney for Respondent,  
American National Insurance Company,  
903 Medical Arts Building, Galveston, Texas.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Bldg., Galveston, Texas.

The foregoing Motion's of Respondent, American National Insurance Company for more definite statements were filed, together with four copies thereof, with the Trial Examiner before announcement of ready to proceed this 26th day of July 1949.

A copy thereof has at the same time been personally delivered to C. A. Stafford, Vice President of Office Employees International Union, A. F. L., Local 27, the other party named in the Complaint.

Louis J. Dibrell,  
(LOUIS J. DIBRELL).

61 Before National Labor Relations Board

[Title omitted.]

Case No. 39-CA-33

*Order designating trial examiner*

It Is Hereby Ordered that Wallace E. Royster act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 5, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., July 26, 1949.

[SEAL]

William R. Ringer,  
(WILLIAM R. RINGER),  
*Chief Trial Examiner.*

62 Before National Labor Relations Board

[Title omitted.]

Case No. 39-CA-33

*Request of respondent, American National Insurance Company, for extension of time for filing with the trial examiner proposed findings and conclusions and brief in support of same.*

*To the Chief Trial Examiner of the National Labor Relations Board:*

Respondent, American National Insurance Company, respectfully requests extension of time within which to file with the Trial Examiner its Proposed Findings and Conclusions and its Brief in Support of Same and as basis for such request, respectfully shows:

At approximately 5:30 P. M. on Wednesday, August 3, 1949, and before the close of the hearing before the Honorable W. E. Royster, held in the United States District Court Room, Federal Building, Galveston, Texas, in the above numbered and styled cause, Respondent, American National Insurance Company, through its attorney, Louis J. Dibrell, did request of the Trial Examiner, the right to file Proposed Findings and Conclusions and Brief in Support of Same, and was thereupon, by the Trial Examiner, granted a period of fifteen (15) days within which to do so, such period of fifteen days to start as of the following day, Thursday, August 4, 1949.

As of this day, August 10, 1949, there has been so far delivered to Respondent by Mrs. Eagleston, the official reporter, pages numbered 1 through 338 of the Official Record covering the progress of the Hearing from its start on Tuesday, July 26, 1949, through the afternoon adjournment at 4:00 P. M. on Thursday, July 28, 1949. Respondent is informed by the official reporter that the total length of the Official Record will be approximately 1,000 pages and that she does not expect to be able to make delivery of same to Respondent prior to the end of this current week. Respondent would further show that on the first three days of the Hearing, being July 26th, 27th and 28th, the Hearing ran only from 10:00 in the morning until 4:00 in the afternoon, but that on the following day, Friday, July 29th, the Hearing continued until 6:00 P. M. and on Monday, Tuesday and Wednesday, August 1st, 2nd and 3rd, the Hearing convened at 9:30 in the morning and lasted until approximately 5:00 in the afternoon.

It is manifestly impossible for Respondent to properly prepare its requested Findings and Conclusions and its Brief in Support of Same with the proper and required references to the Official Record unless and until it has been in possession of the Official Record for sufficient length of time to study same and prepare the references thereto which it expects to use in its requests and brief.

Wherefore, Respondent, American National Insurance Company respectfully requests of the Chief Trial Examiner of the National Labor Relations Board that the time for filing with the Trial Examiner of its Proposed Findings and Conclusions and its Brief in Support of Same be extended for a period of thirty (30) days in addition to the time already allowed by the Trial Examiner under authority of Sec. 203.42 of the Regulation of the National Labor Relations Board, and, in the alternative, that the Chief Trial Examiner grant the longest exten-

sion of such time under thirty days that he feels with propriety should be granted.

AMERICAN NATIONAL INSURANCE COMPANY,  
By Louis J. Dibrell,  
(LOUIS J. DIBRELL),

*Its Attorney.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Bldg.,  
Galveston, Texas.

Certificate of service (omitted in printing).

65 Before National Labor Relations Board

*Order granting extension of time to file briefs*

Telegram

From Files.

Chg. Appropriation NLRB WES/ec.

August 12, 1949.

E. Don Wilson, Esq., Nat'l. Labor Relations Board, 1101 Texas and Pacific Bldg., Fort Worth 2, Tex.

Louis J. Dibrell, Esq., Dibrell, Dibrell, and Greer, 903 Medical Arts Building, Galveston, Tex.

Mr. C. A. Stafford, 2070 Rosedale Drive, Port Arthur, Tex.

Mr. Leonard Mosele, 718 Medical Arts Building, Galveston, Tex.

Mr. A. G. Wilson, 1115 1/2 Avenue B, Galveston, Tex.

Re: American Nat'l. Insurance Company, 39-CA-33. At request of counsel for respondent for extension of time to file briefs, time is hereby extended to September 2, 1949.

WILLIAM E. SPENCER,  
*Acting Chief Trial Examiner.*

66 Before National Labor Relations Board

Case No. 39-CA-33

[Title omitted.]

*Findings and conclusions proposed to the trial examiner, W. E. Royster, by respondent, American National Insurance Company.*  
To the Honorable W. E. ROYSTER, Trial Examiner:

Respondent, American National Insurance Company, respectfully proposes that the following findings and conclusions should be made and reached by the Trial Examiner and embodied in his Intermediate Report.

1.

The allegations contained in paragraph numbered 5 of the Complaint are not supported by the evidence.

2.

General Counsel has failed to establish the allegations contained in paragraph numbered 5 of the Complaint by a preponderance of the evidence.

3.

67 At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 5 of the Complaint are true.

4.

The following allegation contained in paragraph numbered 5 of the Complaint, to wit, "Respondent has since the date of discharge listed above in paragraph numbered 4 \* \* \* refused to and continues to refuse to reinstate the employee above named (Emma Moore) to her former or substantially equivalent position of employment," is not supported by the evidence.

5.

General Counsel has failed to establish by a preponderance of the evidence the allegation contained in paragraph numbered 5 of the Complaint quoted in the foregoing requested finding number 4.

6.

At best the evidence raises but a mere suspicion that the allegation contained in paragraph numbered 5 of the Complaint quoted in the foregoing requested finding number 4 is true.

7.

The allegations contained in paragraph numbered 6 of the Complaint are not supported by the evidence.

8.

68 General Counsel has failed to establish the allegations contained in paragraph numbered 6 of the Complaint by a preponderance of the evidence.

9.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 6 of the Complaint are true.

10.

In fact the discharge of its former employee, Emma Moore, by Respondent on January 5, 1949, as alleged in paragraph numbered 4 of the Complaint was "for cause" within the meaning and purview of Section 10 (c) of the Labor Management Relations Act of 1947.

11.

General Counsel has failed to establish by a preponderance of the evidence that Emma Moore was not discharged "for cause" within the meaning and purview of Section 10 (c) of the Labor Management Relations Act of 1947.

12.

At best the evidence raises but a mere suspicion that the said Emma Moore was not discharged "for cause" as is set forth in paragraph numbered 10.

13.

69 A preponderance of the evidence establishes that the said Emma Moore was discharged "for cause" as set forth in the preceding proposed finding number 10.

14.

The allegations contained in paragraph numbered 12 of the Complaint are not supported by the evidence.

15.

General Counsel has failed to establish by a preponderance of the evidence the allegations contained in paragraph numbered 12 of the Complaint.

16.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 12 of the Complaint are true.

17.

The right of an employee found by the Board to have been discriminately discharged to reinstatement by his employer to his former or substantially equivalent position of employment is a personal right belonging to such employee.

18.

In order for such employee, claiming to have been discriminatively discharged, to avail himself of such personal right to reinstatement, it is necessary for such employee to establish by competent evidence in the record made before the Trial Examiner that he desires such reinstatement.

19.

There is no competent evidence in the record that Emma Moore desires reinstatement by Respondent.

20.

The greater weight of the competent evidence in the record, being the testimony of Emma Moore herself as given from the witness stand, strongly suggests that she does not desire reinstatement by Respondent.

21.

Emma Moore was personally present at the hearing during the entire testimony of each and all of the witnesses presented by Respondent who testified in respect to the facts and circumstances surrounding and the background and history preceding her discharge.

22.

Neither Emma Moore nor General Counsel in her behalf made any offer to refute or to answer or to explain the evidence presented by Respondent as to her discharge and as to the events leading thereto and the reasons therefor.

23.

The allegations contained in paragraph numbered 10 of the Complaint are not supported by the evidence.

24.

71 General Counsel has failed to establish the allegations contained in paragraph numbered 10 of the Complaint by a preponderance of the evidence.

25.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 10 of the Complaint are true.

26.

Respondent has not, in fact, since on or about the 30th day of November 1948, refused to bargain collectively with the Union representative of its employees.

27.

Respondent is not now, in fact, continuing to refuse to bargain collectively with the Union representative of its employees.

28.

Upon receipt of the original request of the Union representative of its employees for the commencement of bargaining negotiations, Respondent did forthwith appoint and constitute its contract negotiation committee, consisting of Louis J. Dibrell, Chas. G. Dibrell, Jr., and Leonard Mosele.

29.

72 From its inception, Respondent's said contract negotiation committee has been and remains clothed with full power and authority to bargain collectively with the Union representative of its employees to negotiate a contract with such union and to bind Respondent by its agreements and commitments.

30.

At no time during the course of the negotiations has the Union's contract negotiation committee in any manner questioned the authority and power of Respondent's contract negotiation committee as set forth in the preceeding proposed finding numbered 29.

31.

Respondent's said contract negotiation committee has in fact met with the Union's negotiation committee at all reasonable times as has been requested by said Union's negotiation committee.

32.

The Union's contract negotiation committee has been furnished by Respondent's contract negotiation committee with all such information as has been requested concerning the roster of employees within the bargaining unit and the seniority status and classification of each as well as all other requested information concerning the financial condition and the earnings of Respondent.

33.

73 The Union's contract negotiation committee has been furnished by the Respondent's contract negotiation committee with full and complete counter-proposals and statements as to the position of Respondent as to each and every proposal for embodiment into a contract which has been proposed by the Union's contract negotiation committee.

34.

The present proposal of the Union's contract negotiation committee as to a contract between the Union and Respondent is contained in the so-called "Ball" proposal contract first submitted to Respondent's committee in the negotiation meeting held May 20, 1949.

35.

Article numbered 2-A headed "Functions and Prerogatives of Management" in the so-called "Ball" proposed contract is copied verbatim from the letter of January 17, 1949, from Respondent's contract negotiation committee to Union's contract negotiation committee setting forth Respondent's counter-proposals and positions with the following exceptions and changes:

1. The words "and just" have been inserted between the words "proper" and "cause" in the last line of the first paragraph of said Article 2-A.

2. The words "in a fair and just manner" have been inserted after the word "company" in the sixth line of the second paragraph of said Article 2-A.

3. The last clause of the last sentence of the second paragraph of said Section 2-A as contained in Respondent's letter of January 17, reading, "It is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration," has been deleted from such paragraph in the so-called "Ball" proposed contract.

36.

Since the submission of the so-called "Ball" proposed contract, Respondent's contract negotiation committee has agreed with the Union's committee upon the inclusion of the words "and just" and the words "in a fair and just manner" in said Article 2-A as set forth in the preceding paragraph, but has not agreed with the Union's committee upon the exclusion of the final words thereof to-wit, "It is further agreed that the final decision of the company, made by such top management officials shall not be further reviewable by arbitration," as set forth in the preceding proposed finding number 35.

37.

At the close of the last meeting between the contract negotiation committees of Respondent and Union held on the afternoon of Monday, July 25, 1949, the day before the commencement of the hearing before the Trial Examiner on this Complaint, the following were the substantial points of disagreement between Respondent and Union as to a contract between them:

1. Whether or not such contract should provide for five, six or seven paid holidays per year, and if six, whether or not the sixth paid holiday should consist of two split half-holidays.

2. Whether or not Respondent must agree to the inclusion in such contract of a provision for review by arbitration of the final decisions of top company management in respect to the matters set forth as functions and prerogatives of management in Article 2-A of the so-called "Ball" proposed contract.

3. Whether or not any changes or modifications should be made in Article numbered 12, headed "Strikes and Lock-outs" in the so-called "Ball" proposed contract to meet the Union's objections to the refusal of Respondent to provide in the contract for review by arbitration of the final decisions of top management officials as to the matters set forth in said paragraph 2-A and, if so, what changes or modifications.

4. What increase in rates of pay, if any, would Respondent agree to in such contract.

38.

The question of whether or not Respondent has refused since on or about November 30, 1948, and continues to refuse to bargain collectively with the Union as is set forth in paragraph numbered 10 of the Complaint is a question of law and not a question of fact.

39.

There is no competent evidence in the record that Respondent has refused or is refusing to "confer in good faith" within the meaning and purview of Section 8 (d) of the Labor Management Relations Act of 1947.

40.

By far the greater part of time spent in the negotiation meetings between Respondent's committee and the Unions 76 committee has been consumed in discussion of the question of whether or not Respondent has as a matter of law the right to refuse to agree to a provision in the contract providing for review by arbitration of the final decisions of its top management with respect to the matters set forth in said paragraph 2-A of the so-called "Ball" proposed contract.

41.

Respondent in order to meet the test of bargaining collectively in good faith within the meaning and purview of Section 8 (d) of the Labor Management Relations Act of 1947 is not required to agree to a provision in the contract providing for review by arbitration of the final decisions of its top management in respect to the matters set forth in paragraph numbered 2-A of the so-called "Ball" proposed contract.

42.

Respondent in order to meet the test of bargaining collectively in good faith within the meaning and purview of Section 8 (d) of the Labor Management Relations Act of 1947 is not required to concede to the Union wage rates in excess of those which Respondent has already offered to the Union.

43.

Respondent has not failed nor refused and is not now continuing to fail or refuse to bargain collectively in good faith with

the Union within the meaning and purview of Section 8 (d) of the Labor Management Relations Act of 1947.

44.

77 The allegations contained in paragraph numbered 13 of the Complaint are not supported by the evidence.

45.

General Counsel has failed to establish the allegations contained in paragraph numbered 13 of the Complaint by a preponderance of the evidence.

46.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 13 of the Complaint are true.

47.

The allegations contained in paragraph numbered 11 of the Complaint together with such additional allegations as were added to said paragraph numbered 11 by amendment during the hearing, except insofar as they charge activity on the part of L. H. Peacock, are not supported by the evidence.

48.

General Counsel has failed to establish the allegations contained in paragraph numbered 11 of the Complaint, together with such additional allegations as were added to said paragraph-numbered 11 by amendment during the hearing, except insofar as they charge activity on the part of L. H. Peacock, by a preponderance of the evidence.

49.

78 At best, the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 11 of the Complaint together with such additional allegations as were added to said paragraph numbered 11 by amendment during the hearing, except insofar as they charge activity on the part of L. H. Peacock, are true.

50.

The allegations contained in paragraph numbered 14 of the Complaint as to facts alleged in paragraph numbered 5 and 10,

and of paragraph numbered 11, as limited in the foregoing proposed finding numbered 47, thereof are not supported by the evidence.

51.

General Counsel has failed to establish the allegations contained in paragraph numbered 14 of the Complaint as to the facts alleged in paragraphs numbered 4, 5 and 10, and of paragraph numbered 11 as limited in the foregoing proposed finding number 47, thereof by a preponderance of the evidence.

52.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 14 of the Complaint as to the facts alleged in paragraphs numbered 4, 5 and 10, and of paragraph numbered 11 as limited in the foregoing proposed finding number 47, thereof are true.

53.

79 The allegations contained in paragraph numbered 16 of the Complaint are not supported by the evidence, except insofar as the acts of Respondent alleged in paragraph numbered 11, as limited in the foregoing proposed finding number 47, of the Complaint are concerned.

54.

General Counsel has failed to establish the allegations contained in paragraph numbered 16 of the Complaint by a preponderance of the evidence except insofar as the acts of Respondent alleged in paragraph numbered 11, as limited in the foregoing proposed finding number 47, of the Complaint are concerned.

55.

At best the evidence raises but a mere suspicion that the allegations contained in paragraph numbered 16 of the Complaint are true except for the acts of Respondent alleged in paragraph num-

bered 11, as limited in the foregoing proposed finding number 47, of the Complaint.

Respectfully submitted.

Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
Chas. G. Dibrell, Jr.,  
(CHAS. G. DIBRELL, JR.);  
*Attorneys for Respondent,*  
*American National Insurance Company.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Building, Galveston, Texas.

80 Certificate of service (omitted in printing).

[Title omitted.]

Before National Labor Relations Board

Case No. 39-CA-38

[Title omitted.]

*Order transferring case to the National Labor Relations Board*

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.

81 It is Hereby Ordered, pursuant to Section 203.45 of National Labor Relations Board Rules and Regulations, Series 5, that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., October 11, 1949. °

By direction of the Board:

Frank M. Kleiler,  
(FRANK M. KLEILER),  
*Executive Secretary.*

Note: Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Your attention is specifically directed to the concluding paragraph of the Intermediate Report in respect to your right to file exceptions, briefs, and to request oral argument. Please note that exceptions and brief must be filed as separate documents.

(Affidavit and Return Receipts omitted.)

[Title omitted.]

*Request of Respondent, American National Insurance Company, for extension of time for filing with the National Labor Relations Board exceptions to the intermediate report and recommended order filed with the Board by the trial examiner, and brief in support thereof.*

*To the National Labor Relations Board:*

Respondent, American National Insurance Company, respectfully requests extensions of time permitted under Sec. 203.46 of the Regulations of the National Labor Relations Board for the filing by it of its Exceptions to the Intermediate Report and Recommended Order filed with the Board herein by the Trial Examiner, together with its Brief in support of such Exceptions, and as basis for such request respectfully shows:

It is manifestly impossible for Respondent to properly prepare its statement of exceptions and its brief to properly prepare its statement of exceptions and its brief with the required  
83 designation by precise citation of the portions of the Record, consisting of 899 pages relied upon, within a period of twenty days from the service upon Respondent of the Order transferring this case to the Board.

Wherefore, Respondent, American National Insurance Company, respectfully requests of the National Labor Relations Board that the time for filing by it of its Exceptions to the Intermediate Report and Proposed Order filed by the Trial Examiner herein be extended for a period of thirty (30) days in addition to the twenty days permitted under Sec. 203.46 of the Regulations of the National Labor Relations Board; or, in the alternative, that the Board grant the longest extension of such time under the requested thirty day period that the Board feels with propriety should be granted.

AMERICAN NATIONAL IN-  
SURANCE COMPANY,

By Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
Its Attorney.

Of Counsel:

DIBRELL, DIBRELL & GREER,

903 Medical Arts Building, Galveston, Texas.

(Certificate of service (omitted in printing).)

85

Before National Labor Relations Board

Case No. 39-CA-33.

[Title omitted.]

*Request of Respondent, American National Insurance Company,  
for permission to argue orally before the National Labor Relations Board.*

*To the National Labor Relations Board:*

Respondent, American National Insurance Company, herewith gives notice of its intention to file Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner which has been filed with the National Labor Relations Board in the above numbered and styled case, together with Brief in support thereof, and within ten (10) days from the date of service of the Order transferring this case to the Board respectfully petitions the Board for permission to argue orally before the Board.

AMERICAN NATIONAL INSURANCE COMPANY,  
By Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
*Its Attorney.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Building, Galveston, Texas.  
Certificate of service (omitted in printing).

86

87

Before National Labor Relations Board

*Orders granting extension of time for filing*

N. L. R. B.

CNN:LFW

October 24, 1949

Louis J. Dibrell, 903 Medical Arts Building, Galveston, Texas.

Re American National Insurance Company, Case No. 39-CA-33.  
Time for filing exceptions and brief extended to November 14, 1949.

NATIONAL LABOR RELATIONS BOARD.

N. L. R. B.

CMM: LFW

October 24, 1949

Clifford Potter, Officer in Charge, 39th Sub-region, 509 Milan Building, Houston, Texas

Re American National Insurance Company, case No. 39-CA-33. Time for filing exceptions and brief extended to November 14, 1949. Please advise all parties. Louis J. Dibrell already so advised.

NATIONAL LABOR RELATIONS BOARD.

88 Before the National Labor Relations Board

*Exceptions of respondent, American National Insurance Company, to the intermediate report filed by the trial examiner*

[Title omitted.]

Case No. 39-CA-33

To the Honorable National Labor Relations Board:

Respondent, American National Insurance Company, respectfully files the following Exceptions to the Intermediate Report heretofore filed in this case by the Trial Examiner.

I.

Respondent excepts to the conclusion beginning at line 28 and ending with line 33, page 174 of the Intermediate Report reading,

"I am persuaded to the conclusion that respondent never sincerely intended to bargain with the Union but on the contrary was determined at the outset of negotiations to agree to nothing that would serve in any respect to enhance the Union's prestige or make it appear to the employees as an effective bargaining agency,"

for the following reasons:

A. Such conclusion is wholly unsupported by any credible evidence of probative value in the record.

B. Such conclusion is not supported by the preponderance of the evidence in the record.

C. Such conclusion is against the preponderance of the evidence in the record.

D. At best such conclusion is based upon a mere suspicion in the mind of the Trial Examiner, unsupported by any credible

evidence of probative value in the record, but, on the other hand, stemming solely from and depending wholly for support upon the net present result that the Union has, thus far in its contract negotiations with Respondent, been unable to achieve accomplishment of its aim and desire to secure from Respondent the character of contract which it seeks.

E. Such conclusion assumes the false premise based upon an erroneous concept of the Act that Respondent in its negotiations with the Union is required to agree with the Union in such manner as will serve to enhance the Union's prestige with its members and to make it appear to the employees that the Union is an effective bargaining agency.

F. Such conclusion assumes the false premise that Respondent is required in its contract negotiations to do that for the  
90 Union which the Union must, and can lawfully only, do for itself, to wit: enhance the Union's prestige with the employees and prove to such employees, or at least persuade them to believe, that it, the Union, is an effective bargaining agency.

G. Such conclusion is based at least in part upon the following statement contained in that part of the Intermediate Report beginning at line 7, page 175, and ending with line 22, page 175, reading,

"Respondent opposed the selection of a bargaining Agent and told the employees that their best interest would not be served by such a choice.

"During the fall of 1948, respondent told its employees, 'you will have to pay a substantial initiation fee and current dues in order to become and remain a member of the union, and before digging down into your pocket to pay the initiation fee and obligating yourself to continue to pay dues, you should carefully analyze the situation to determine, in your own mind whether the union really offers you something of substantial value for your money, because, otherwise, you will simply be throwing your money away.'

"This company sincerely believes that the union does Not offer you and will Not afford you any real advantage of value."

as to two acts of Respondent, both of which Respondent had a right to do and as to neither of which was it alleged in the Complaint, nor urged upon the Hearing before the Trial Examiner, nor found by the Trial Examiner in his Intermediate Report,

Respondent was guilty of any unfair labor practice in doing.

91 H. Such conclusion is based at least in part upon the false premise that Respondent did not have the right to oppose the selection of a bargaining agency and/to tell its employees that their best interest would not be served by such a

choice, when, in fact and in law, Respondent did have the right to pursue such course of action.

I. Such conclusion is based at least in part upon the false premise that Respondent did not have the right to tell its newly hired employees during the fall of 1948 (after the election and after certification of the Union) in effect that it would cost such employees money to become and remain members of the Union and that each should analyze for himself the situation in order to determine the wisdom of the expenditure of such money, inasmuch as the company sincerely believed that the Union did not offer to such employees anything of real value, when, in fact and in law, Respondent had the right to make such statement and express such conviction to its such employees under the protection of the so-called "free speech" provisions of the Act, Section 8 (c) thereof.

In connection with the foregoing exception, certain facts clearly appearing from the record, but not appearing directly or in context from the Intermediate Report should be considered.

1. The quoted statements are contained in and are part of a letter addressed by Respondent to and delivered only to its newly hired employees. G. C. Exhibit 2, Record pages 22 and 34. A complete copy of said letter except for the name of the new employee to which same is given and the date of delivery is attached hereto for reference, marked Appendix A.

92 2. Such employees are not required by the terms of the Union's certification or otherwise by any provision of the Act to become and remain members of the Union.

3. It is not charged in the Complaint, nor was it urged upon the Hearing before the Trial Examiner, nor has it been found by the Trial Examiner in his Intermediate Report that the dissemination of such letter to its new employees in and of itself constituted the commission of an unfair labor practice on the part of Respondent.

4. Neither the quoted part of said letter, nor any other part thereof, contains any threat of reprisal or force or promise of benefit.

5. Inasmuch as the dissemination of said letter and the quoted portion thereof did not constitute an unfair labor practice because it contains no threat of reprisal or force or promise of benefit, it necessarily follows under the express provision of Section 8 (c) of the Act that such letter and the quoted provisions thereof may not be considered as evidence of another and different unfair labor practice.

## II.

Respondent excepts to the following quoted language beginning at line 23 on page 175 and ending with line 4, page 176 of the Intermediate Report.

"Respondent had and seized the opportunity to arrange subsequent events in order to substantiate its prophecy. By going through the sham of frequent meetings by entering into protracted discussions of the Union's proposals, respondent sought to  
93 give the appearance of bargaining, but this was mere pretense. Respondent's position was predetermined and inflexible. Respondent was determined to discredit the Union in the eyes of its members."

for the following reasons;

A. Such statements are wholly unsupported by any credible evidence of probative value in the record.

B. Such statements are not supported by the preponderance of the evidence in the record.

C. Such statements are against the preponderance of the evidence in the record.

D. At best such statements are based upon a mere suspicion in the mind of the Trial Examiner not arising from any credible evidence of probative value in the record.

E. Such statements are inconsistent with and can not be reconciled to the prior statements beginning at line 22 on page 172 and ending with line 13, page 173 of the Intermediate Report, reading,

"There is no doubt that respondent here had a right to insist upon the inclusion of the 'prerogative clause' in any contract. I find, contrary to the contention of the General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment  
94 more favorable than those then existing. Assuming, but of course not deciding, that respondent's employees were ill-paid and that respondent could well afford to grant a wage increase, it was under no legal compulsion to do so. True, the Act recognizes (Section 1) that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce but in ameliorating this condition the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table."

F. Such statements are inconsistent with and can not be reconciled to the prior statements beginning with line 14 and ending with line 22, page 173 reading,

"It is argued, further, however, that the intransigence of respondent is, in itself, evidence of bad faith—that respondent by

its refusal to grant more than minor or meaningless concessions has demonstrated that it did not approach the bargaining table with an open mind—that its conduct has not been that of one seeking agreement. But ‘open mind’ need not mean a mind without conviction nor need it mean a mind easily swayed by argument.”

G. A net result of such statements is to brand Respondent guilty of an labor unfair practice in having taken and maintained positions which the Trial Examiner has previously and properly found Respondent had a right to take and maintain.

H. A further net result of such statements is to declare Respondent guilty of an unfair labor practice not by reason of having taken and maintained positions which it had a right to  
95 take and maintain, and which the Trial Examiner has previously and properly found Respondent had a right to take and maintain, but rather because of the results which have ensued from Respondent’s wholly rightful taking of and maintaining such positions.

### III.

Respondent excepts to the finding beginning with line 5 and ending with line 13, page 176 of the Intermediate Report, reading,

“I find that respondent entered into its meetings with the Union determined not to reach agreement on any matter on terms which the Union could hold forth to the employees as an accomplishment, but by this conduct respondent expected to discredit the Union as a bargaining agent and to discourage others from ‘digging down’ into their pockets to join an organization which, demonstrably, had been unable to gain for employees ‘any real advantage of value,’”

for the following reasons:

A. Such finding is wholly unsupported by any credible evidence of probative value in the record.

B. Such finding is not supported by the preponderance of the evidence in the record.

C. Such finding is against the preponderance of the evidence in the record.

D. At best, such finding is based upon a mere suspicion in the mind of the Trial Examiner not arising from any credible evidence of probative value in the record.

96 E. Such finding requires of Respondent that it agree with the Union on terms which the Union can hold forth to the employees as an accomplishment, even though this would, of necessity, require Respondent to recede from its insistence upon cer-

tain positions which the Trial Examiner had previously and properly found Respondent had a right to insist upon, and, therefore, such finding is inconsistent with and can not be reconciled to the prior statements in the Intermediate Report quoted in Section II-E hereof.

F. Such finding is in disregard and violation of Section 8 (c) of the Act in that it depends for evidentiary support upon the expressing by Respondent of views, arguments and opinions and the dissemination thereof which do not contain any threat of reprisal or force or promise of benefit and which, therefore, can neither constitute nor be evidence of an unfair labor practice.

#### IV.

Respondent excepts to the finding starting at line 14 and ending with line 18, page 176 of the Intermediate Report, reading,

"I find that from and after November 30, 1948, respondent refused to bargain in good faith with the Union in matters of wages, hours of employment and other conditions of employment and has thereby violated and is violating Section 8 (a) (1) and (5) of the Act."

for the following reasons:

A. Such finding is wholly unsupported by any credible evidence of probative value in the record.

97 B. Such finding is not supported by the preponderance of the evidence in the record.

C. Such finding is against the preponderance of the evidence in the record.

D. At best, such finding is based upon a mere suspicion existing in the mind of the Trial Examiner not arising from any credible evidence of probative value in the record.

E. Such finding is an ultimate finding based upon and arrived at wholly from prior statements, conclusions and findings in the Intermediate Report hereinbefore excepted to, and same is here excepted to for all the reasons stated in the foregoing exceptions.

#### V.

Respondent excepts to the recommendation beginning with line 6 and ending with line 10, page 177, of the Intermediate Report reading,

"Having found that since November 30, 1948, respondent has failed to bargain in good faith with the Union as the exclusive representative of its employees in an appropriate unit, it will be

recommended that upon request respondent bargain collectively with the Union,"

for the following reasons:

A. Such recommendation is so vague and indefinite as to be meaningless because it leaves wholly unanswered and contains neither within itself nor by reference to or in context with the Intermediate Report as a whole, any suggestion as to the following important questions.

1. In order in the future to bargain collectively with the Union as required by the Act, must Respondent abandon or recede from its insistence upon the inclusion in its contract with the Union of the prerogative clause (lines 18, page 169, through 9, page 170, Intermediate Report), or any part thereof, and if so, what part, and to what extent?

2. In order in the future to bargain collectively with the Union as required by the Act, must Respondent abandon or recede from its insistence upon inclusion in its contract with the Union of a provision that its decisions in respect to such prerogatives be not reviewable by arbitration?

3. In the future, in order to bargain collectively with the Union as required by the Act, must Respondent in its contract with the Union agree with the Union as to such increase in wages as the Union might demand, and if so, to what extent?

4. In the event the answers to the foregoing questions are in the negative, then will Respondent be held to have committed the unfair labor practice of refusing to bargain collectively with the Union because agreement between the Respondent and the Union and resulting contract does not then ensue?

## VI.

Respondent excepts to the language and recommendation beginning at line 16, page 177, and ending at line 4, page 178, of the Intermediate Report reading,

99 " . . . by its studied refusal to bargain with the majority representative of its employees, Respondent has demonstrated a determination not to afford to its employees rights which the Act was designed to protect . . . I will recommend therefore, that Respondent be ordered to cease and desist from interfering with, restraining or coercing its employees in any manner in the exercise of the right to . . . bargain collectively through representatives of their own choosing . . . "

for all of the reasons set forth in the Exceptions contained in the preceding Section numbered IV hereof.

## VII.

Respondent excepts to the conclusion of law beginning with line 25, page 178 and ending with line 3, on page 179, of the Intermediate Report, being the subparagraph numbered 4, reading,

"By refusing to bargain with Office Employees International Union, A. F. L., Local No. 27 on November 30, 1948, and thereafter, as the exclusive representative of employees in the appropriate unit, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act,"

for the reason that such conclusion of law is based wholly on the erroneous and false assumption that Respondent has refused to bargain collectively with the Union and is, therefore, improper for inclusion in the Intermediate Report.

## VIII.

100 Respondent excepts to the recommendation beginning with line 21 and ending with line 29, page 179, being subparagraph 1 (a) of the Intermediate Report, reading,

"1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all employees in its Galveston, Tex., office excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act,"

for all of the reasons stated in the Exception contained in the foregoing Section No. IV. hereof.

## IX.

Respondent excepts to the recommendation beginning with line 14 and ending with line 20, page 180 being paragraph 2 (a) of the Intermediate Report, reading,

"Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all employees in the unit herein found to be appropriate, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract,"

101 for all of the reasons stated in the Exceptions contained in Section IV hereof and for the additional reason that it will obviously not effectuate the policies of the Act to require by Official Order of the Board that Respondent in the future in its negotiations with the Union do only that which it has at all times heretofore in such negotiations been doing; and further for the reason that it will obviously not effectuate the policies of the Act for the Board by Official Order to brand Respondent with the stigma of having committed and continuing to commit the unfair labor practice of refusal to bargain collectively with the Union simply because it has taken and maintained positions which it had a right to take and maintain and which the Trial Examiner found that it had a right to take and maintain.

## X.

Respondent excepts to Appendix A in the Intermediate Report being the recommended notice, for the following reasons:

A. Such notice as recommended would require of Respondent that it advise its employees as follows:

"All our employees are free to become or remain members of this Union or any other labor organization,"

but does not go further and likewise advise such employees that all of them are free to refrain from becoming or remaining members of this Union, or any other labor organization, which is, of course, the lawful right of such employees, and for such reason the recommended notice would tend to mislead and misinform Respondent's employees of their true lawful rights as to whether they shall or shall not become and remain members of the Union.

102 B. Inasmuch as Respondent has not and is not now refusing to bargain collectively with the Union, Respondent should not be required to notify its employees that it will, pursuant to recommendations of the Trial Examiner, in the future bargain collectively in good faith with the Union, thus affording to the Union an economic advantage in its contract negotiations with Respondent to which the Union is not and ought not of right to be entitled.

## XI.

Respondent excepts to the Intermediate Report as a whole insofar as it finds Respondent guilty of unfair labor practices of refusing to bargain collectively within the meaning of Sections 8 (a) (1) and (5) of the Act, and recommends certain affirmative action for the correction of such unfair labor practices for the reason that such Intermediate Report is so vague, indefinite and

uncertain as to leave Respondent wholly in the dark as to what it must in the future do or refrain from doing in its negotiations with the Union to avoid continuation or recurrence of such unfair labor practices, which the Trial Examiner says have in the past occurred, and now continue to occur. As part of this exception Respondent again refers to and reiterates all of the Exceptions hereinbefore contained, and especially those set forth in the foregoing Section numbered IV hereof.

Respectfully submitted.

Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
Chas. G. Dibrell, Jr.,  
(CHAS. G. DIBRELL, Jr.),  
*Attorney for Respondent,*  
*American National Insurance Company.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Building, Galveston, Texas.

103 . Certificate of service (omitted in printing).

*Appendix "A."—Letter to New Employees*

AMERICAN NATIONAL INSURANCE CO.

W. L. MOODY, JR., PRESIDENT

Galveston, Texas

The American National Insurance Company wishes to extend this cordial welcome to you as a new member of its organization and to assure you of its desire to make your association with this company lasting, pleasant and profitable.

104 . In its turn, this Company expects of you cooperation, attentiveness to your duties and an understanding of the problems of the Company, at least insofar as they affect you.

One of the most important of these problems is the relationship between this Company as your employer and you as its employee. Unless this relationship is maintained on the high and understanding plane it should be, you will not be happy in your job, and this Company will not benefit from the type of service from you to which it is justly entitled.

For these reasons this Company feels that it has not only the right, but the obligation as well, to offer you the following advise.

You will be solicited by union organizers to join Local 27, Office Employees' International Union. Please Bear In Mind At All

Times That It Was Not Necessary For You To Become A Member Of This Union To Obtain Your Present Employment With This Company, And That It Is Not, And Will Not Be Necessary For You To Be Or Remain A Member Of This Union To Retain Your Employment With This Company. This a right guaranteed to you by law, and this Company has no desire to dictate to you one way or the other as to whether you should or should not join the union.

The simple fact of the matter remains, however, that you will have to pay a substantial initiation fee and current dues in order to become and remain a member of the union, and before digging down into your pocket to pay the initiation fee and obligating yourself to continue to pay the dues, you should carefully analyze the situation to determine, in your own mind, whether the union really offers you something of substantial value for your money, because otherwise, you will simply be throwing your money away.

105 This Company sincerely believes that the union does Not offer you and will Not afford you any real advantage of value. This Company gives, and will continue to give, all of its employees, union and non-union alike, a fair and square deal without coercion from any union.

It is, therefore, suggested that when you are approached by a union organizer to join the union, you carefully weigh all of the facts as they affect you personally in your own mind so as to reach your own conclusion as to where your best interests lie. In order to do this, you must be careful not to be misled by the promises and representations to be made to you by organizers seeking to persuade you to join the union. You should seek the facts yourself. Inquire amongst other satisfied non-union employees of this Company, and, if you like, feel free to discuss the problem with the officers of the Company.

Above all, this Company wants you to know that all of its officers, including myself, are your friends and want to help you. If this friendship is maintained on a mutual basis, neither you nor this Company will have any worries or problems that need any outside assistance for solution.

May I wish you the best of luck.

Sincerely,

AMERICAN NATIONAL IN-  
SURANCE COMPANY,

By -----

[Title omitted.]

*Exceptions to intermediate report*

Case No. 39-CA-33

The undersigned hereby excepts to the Findings of Fact and Conclusions of Law and Recommendations of the Trial Examiner in his Intermediate Report issued herein on the 11th day of October 1949, in the following respects:

1. To the Findings of Fact on page 166; beginning on line 1, that Axelson did not threaten Moore with discharge if she talked about the Union and did not inquire if she was a member of or a solicitor for the Union.

2. To the Findings of Fact on page 166, beginning on line 4 thereof, that Moore was careless in the performance of her work and that it was her persistent errors in filing which motivated Respondent in discharging her.

3. To the Finding of Fact on page 166, beginning on line 10, that Axelson reasonably believed Moore would be the one at fault for errors.

107. 4. To the Finding of Fact on page 166, beginning on line 12, that Moore's discharge was not motivated by considerations of union membership or activity.

5. To the Finding of Fact on page 165 of the Intermediate Report, beginning on line 28 thereof, that Rose Vento and other employees in the file room supported Axelson's testimony concerning Moore's deficiencies in her work performance.

6. To the Finding of Fact on page 165 of the Intermediate Report, beginning on line 4 thereof, that according to Axelson it was in late November that Oveda Sellers complained to him about Moore.

7. To the Finding of the Trial Examiner on page 178 of the Intermediate Report, beginning on line 5 thereof, that the evidence does not establish that Moore was discriminatorily discharged.

8. To the recommendation of the Trial Examiner on page 6 of the Intermediate Report, beginning on line 178 thereof, that the allegation of discriminatory discharge with respect to Emma Moore be dismissed.

9. To the Conclusion of Law numbered 7 on page 179 of the Intermediate Report, beginning on line 14 thereof, that Respondent did not violate Section 8 (a) (1) or (3) of the Act by discharging Emma Moore.

10. To the Trial Examiner's recommendation on page 181 of the Intermediate Report, beginning on line 15, that the allegation in the Complaint that Emma Moore was discriminatorily discharged be dismissed.

108 11. To the Finding of the Trial Examiner on page 172 of the Intermediate Report, beginning on line 22 thereof, that the Respondent had a right to insist upon the inclusion of the "prerogative clause" in any contract.

12. To the Findings on page 172 of the Intermediate Report, beginning on line 24, that the "prerogative clause" does not fail to accord to the Union the status secured to it by certification.

13. To the Finding on page 172 of the Intermediate Report on line 27 thereof that Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration.

14. To the Finding on page 173, beginning on line 7 thereof, that in . . . relieving the inequality of bargaining power existing between unorganized employees and organized employers the Act protects employees only in their right to self-organization.

15. To the Finding on page 173 of the Intermediate Report, beginning on line 11 thereof, that economic strength is still the underlying touchstone of success at the bargaining table.

16. To the Trial Examiner's failure to find that Respondent did not have a right to schedule lunch hours to conform to its concept of what would best suit its interests.

17. To the Trial Examiner's failure to find that Respondent had a duty under Section 8 (a) (5) to give to the Union Committee information concerning tests corrected by Respondent in qualifying employees for promotion.

109 18. To the Trial Examiner's Finding, beginning on line 3 of page 173 of the Intermediate Report, that the Company was under no legal compulsion to grant a wage increase, assuming that Respondent's employees were ill-paid and that Respondent could well afford to grant a wage increase.

E. DON WILSON,

*Counsel for the General Counsel.*

Before National Labor Relations Board

[Title omitted.]

*Union's Exceptions to the intermediate report*

The Office Employees International Union, A. F. L., Local 27, makes the following exceptions to the Trial Examiner's Findings of Fact and Conclusions of Law and Recommendations as stated in his Intermediate Report:

1. To the Finding of Fact, page 165, line 28, "that Axelson did not threaten Moore with discharge if she talked about the Union and did not inquire if she was a member of or a solicitor for the Union.

110 2. To the Finding of Fact, page 166, line 2, "that Moore was careless in the performance of her work and that it was her persistent errors in filing which motivated respondent in discharging her."

3. To the Finding of Fact, page 166, line 4, "that Axelson reasonably believed Moore to be the one at fault" for filing errors.

4. To the Finding of Fact, page 166, line 7, that Moore's discharge "was not motivated by considerations of Union membership or activity."

5. To the Finding of Fact, page 165, line 4, that Oveda Sellers complained to Axelson "that Moore threatened that Sellers would be discharged if she did not join the Union and that even if she did join the Union she must keep her dues paid in order to remain in her employment."

6. To the statement appearing on page 178, line 5, that "the evidence does not establish that Emma Moore was discriminatorily discharged."

7. To the Conclusion of Law, No. 7, page 179, line 14, that "Respondent did not violate Section 8 (a) (1) or (3) of the Act by discharging Emma Moore."

8. To the Recommendation appearing on page 181, line 15, "that the allegation in the Complaint that Emma Moore was discriminatorily discharged be dismissed."

Respectfully submitted,

WOLL, GLENN & THATCHER,

By John R. Foley,

(JOHN R. FOLEY),

*Counsel for Office Employees International Union,*

*A. F. of L., Local No. 27,*

*736 Bowen Building, Washington 5, D. C.*

111 Before National Labor Relations Board

*Letter of Union to Board*

LAW OFFICES OF

WOLL, GLENN &amp; THATCHER

General Counsel, American Federation of Labor

J. Albert Woll  
 James A. Glenn  
 Herbert S. Thatcher  
 John R. Foley

736 Bowen Building  
 Washington 5, D. C.  
 Telephone Republic 1717

February 10, 1950

NATIONAL LABOR RELATIONS BOARD,  
*Federal Security Building, South,*  
*3rd & C Streets, S. W.,*  
*Washington D. C.*

Re: American National Insurance Co. and Office Employees  
 International Union, A. F. L., Local No. 27. (Case No. 39-  
 CA-33.

GENTLEMEN: As may have already brought to the Board's attention, a collective bargaining agreement was finally arrived at between the employer and the union in the above matter. However, far from making the 8 (a) (5) charges, findings and recommendations in any way moot, the very making of the agreement, such as it is, indicates the necessity for protections against the type of bargaining as found in the record herein in any future negotiations. The agreement is hardly a model one and was entered into only because the course of conduct engaged in by the Company made it obvious that there had to be either this  
 112 agreement or nothing, and so, in an effort to preserve the very existence of the union, the contract was very reluctantly signed.

This letter is to specifically request and urge the Board, if the facts and law so warrant, to enter its usual order requiring the Company to cease and desist from refusing to bargain in good faith, and requiring it to bargain in good faith in the future. Such protections are absolutely necessary for future negotiations.

In regard to 8 (a) (1) charges, findings and recommendations, we understand that the employer desires that, if an order is entered therein, the usual notice be modified so as to indicate that the employees do not have to join a labor organization if they do

not so desire. There is nothing in the record to warrant a departure from the Board's usual form of order; on the contrary, the record is conclusive that there is involved in this case only an attempt by the employer to interfere with the right of employees to join a labor organization and engage in collective bargaining activities. There is no showing or suggestion of any interference with the right of employees not to join. Accordingly, the order, as usual, should and must be directed only against the unlawful activities as found in the record and should not embrace matters in no way involved in the record.

Very truly yours,

Herbert S. Thatcher,  
(HERBERT S. THATCHER.)

H.S.T.-HR.

Copy to: Mr. Louis J. Dibrell, General Counsel for American National Insurance Co., 903 Medical Arts Building, Galveston, Texas.

113 Before National Labor Relations Board

[Title omitted.]

*Motion of respondent, American National Insurance Company*

*To the Honorable National Labor Relations Board:*

Respondent, American National Insurance Company, respectfully shows the following:

1. That since the Hearing of the above styled cause before the Trial Examiner and the docketing of same with  
114 this Honorable Board, Respondent and the Union have reached a complete bargaining agreement as between them, and have reduced such agreement to writing. Attached hereto, marked Exhibit A, is a true and correct copy of such written contract entered into by and between the Respondent and the Union under date of January 13, 1950. Also attached to this Motion, marked Exhibit A-1, is a true and correct copy of the letter of transmittal signed by both the Union and Respondent, which, by mutual agreement of the parties, accompanied a copy of such contract to each of the employees within the bargaining unit.

Respondent respectfully urges that inasmuch as Respondent and the Union have reached a full and complete agreement as between themselves covering all bargainable matters to which the Union has been certified as exclusive bargaining agent, all issues as to the 8 (a) (5) charges involved herein are now moot. For that

reason Respondent suggests and urges that the Board make no findings and enter no orders with respect to the 8 (a) (5) phases of this case, other than the fact that all issues raised thereby are now moot.

Respondent has been furnished with a copy of the letter of Woll, Menn & Thatcher to this Honorable Board under date of February 10, 1950, wherein it is stated, "As may have already been brought to the Board's attention, a collective bargaining agreement was finally arrived at between the employer and the union in the above matter. However, far from making the 8 (a) (5) charges, findings and recommendation in any way moot, the very making of the agreement, such as it is, indicates the necessity for protection against the type of bargaining as found in the record herein in any future negotiations. The agreement  
115 is hardly a model one and was entered into only because the course of conduct engaged in by the company made it obvious that there had to be either this agreement or nothing, and so, in an effort to preserve the very existence of the Union, the contract was very reluctantly signed.

"This letter is to specifically request and urge the Board, if the facts and law so warrant, to enter its usual order requiring the company to cease and desist from refusing to bargain in good faith, and requiring it to bargain in good faith in the future. Such protections are absolutely necessary for future negotiations."

Respondent respectfully urges that despite the fact that general counsel for the A. F. of L. feels that the agreement reached between Respondent and the Union is "hardly a model one," the fact remains that the contract is in itself complete in all its particulars, and covers all bargainable issues for which the Union was certified. The rule of law that a written instrument, complete and unambiguous by its own terms, cannot be varied by parole or the attempt of one of the parties to state his unannounced reasons for executing same contrary to the clear and unambiguous terms thereof, is so well settled that we will not insult the intelligence of the Board by citing authorities in support thereof. Overt manifestations, and not secret intentions, are the materials out of which contracts are made.

During all of the negotiations preceding the execution of the contract attached as Exhibit A, the Union was ably represented by Mr. C. A. Stafford, International Vice-President of Office Employees International Union, A. F. of L., by Mr. A. G. Wilson, Business Representative of Local 27 thereof, and by three  
116 employees of employer, all of whom constituted the bargaining committee for the Union.

For the Board to enter the recommended Order requiring Respondent to cease and desist from refusing to bargain in good

faith and to bargain in good faith in the future, would, of necessity, have the effect of abrogating the plain, unambiguous, complete contract that Respondent and the Union have, in mutual good faith, entered into, evidencing the mutual declarations on the part of both Respondent and the Union that the bargaining has been in good faith, and that pursuant to such good faith bargaining, the parties have reached a mutual agreement on all matters for which the Union was certified as the exclusive bargaining agent of the employees in question. This contract, by its own terms, will not expire until July 12, 1951, and by its terms, contains complete machinery for the settlement of all matters of conflict that might arise between the Union and Respondent during the term thereof.

We respectfully urge that there is nothing in the record or in the contract that would indicate or support the statement of general counsel for the A. F. of L. in their letter addressed to the Board, under date of February 10, 1950, to the effect that "the agreement is hardly a model one, and was entered into only because the course of conduct engaged in by the Company made it obvious that there had to be either this agreement or nothing, and so, in an effort to preserve the very existence of the Union, the contract was reluctantly signed." The rank conclusions and insinuations on the part on said attorneys are a reflection on the intelligence and ability of the Union's bargaining committee, and, in our opinion, wholly uncalled for.

117 The fact that such attorneys do not like the contract as executed is indeed unfortunate, but does not affect in the slightest the legal rights of the parties thereto, or the legal effect that such contract may have upon the 8 (a) (5) charges involved herein.

If the Board entertains any doubt as to the facts set forth herein, or Respondent's propriety in urging same, Respondent stands ready to make proof thereof.

Respondent, therefore, again respectfully urges the Board that it make no findings and enter no orders with respect to the 8 (a) (5) phases of this case other than the fact that all issues raised thereby are now moot.

2. In connection with the 8 (a) (1) charges involved herein, the Trial Examiner has recommended that the Company be required to take affirmative action which will advise the employees, among other things, that, "All our employees are free to become or remain members of this Union, or any other labor organization."

Respondent respectfully urges that any notice the Board might require it to post with respect to said 8 (a) (1) charges advise the employees not only that "All our employees are free to become

or remain members of this Union, or any other labor organization," but that such order go further and advise such employees that they are "free to refrain from becoming or remaining members of this Union, or any other labor organization."

The members of the bargaining committees of both the Union and Respondent, realizing that there may be some doubt in the minds of the employees with respect to such right, decided  
118 to specifically cover such matter in the contract in question.

This was done in Article X, Sec. 3, reading as follows:

"Both the Company and the Union recognize that neither membership nor non-membership in the Union is a requirement for the obtaining or retaining of employment with the Company."

The respective bargaining committees likewise deemed it advisable to furnish each employee within the bargaining unit with a copy of the contract agreed upon, and decided to accompany such contract by a letter of transmittal, attached hereto as Exhibit A-1. A reading of this letter will reflect that the parties clearly recognize the legal right of the employees to either become or refrain from becoming members of the Union. This letter was signed by Mr. L. Mosele, Secretary-Comptroller of Respondent, and by Mr. A. G. Wilson, Business Representative of Office Employees International Union, Local No. 27. o

The legal right of such employees to become or refrain from becoming members of the Union as they see fit is unquestioned. Section 14 (b) of the Labor-Management Relations Act of 1947 specifically provides, as follows:

"Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

The business of Respondent covered by the Union's certification and the contract in question is all located within the State of Texas.

119 Article 5207a of the Revised Civil Statutes of Texas, provides as follows:

"Article 5207a. Right to bargain freely not to be denied; membership in labor union.

Section 1: The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

Section 2: No person shall be denied employment on account of membership or nonmembership in a labor union.

Section 3: Any contract which requires or prescribes that employees or applicants for employment in order to work for an employer shall or shall not be or remain members of a labor union, shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of any existing contract and to any new agreement or contract executed after the effective date of this Act."

In view of the statutory authority above, plus the additional recognition on the part of both the Union and Respondent of the lawful right of the employees within the bargaining unit to become or refrain from becoming members of the Union, we do not feel that the Board would be justified in lending the weight of its administrative authority in conveying or suggesting to the employees in question only a half-truth insofar as such legal right is concerned. As stated in Respondent's Exceptions to the

120 Intermediate Report filed by the Trial Examiner, the Trial

Examiner's recommended notice that "all our employees are free to become or remain members of this Union, or any other labor organization" tends only to mislead and misinform such employees of their true lawful right with respect to whether they shall or shall not become or remain members of the Union, instead of informing them, as we are certain the Board wishes to do, of their full legal rights with respect to such matter.

3. Respondent respectfully re-urges the proposition set forth in its Brief in Support of its Exceptions to the Trial Examiner's Intermediate Report to the effect that the Board adopt the recommendations of the Trial Examiner insofar as the charge of violation of Sections 8 (a) (1) or (3) of the Act in its discharge of Emma Moore is concerned. The record in this case is abundant in support of such finding and recommendation..

4. Respondent again renews its request that it be permitted to present oral arguments in support of its position in this cause.

Respectfully submitted,

Louis J. Dibrell,  
(LOUIS J. DIBRELL),  
Chas. G. Dibrell, Jr.,  
(CHAS. G. DIBRELL, JR.),

*Attorneys for Respondent,  
American National Insurance Company.*

Of Counsel:

DIBRELL, DIBRELL & GREER,  
903 Medical Arts Bldg.,  
Galveston, Texas.

121 Certificate of service (omitted in printing).

*Exhibit "A" to motion*

Articles of Agreement

Between

American National Insurance Company

And

Office Employees International Union, Local Number 27

Of the

American Federation of Labor

This agreement is made by and between the American Na-  
122 tional Insurance Company, hereinafter referred to as the  
Company, and the Office Employees International Union,  
Local No. 27, hereinafter referred to as the Union.

The contracting parties desire that a maximum of well-being,  
contentment, and good will should result from the friendly delib-  
eration on and fair disposition of all problems arising in the man-  
agement-employee relationship.

## ARTICLE I

### RECOGNITION

The Company recognizes the Union as the sole collective bar-  
gaining representative for all employees in the Home Office of the  
Company at Galveston, Texas, but excluding guards, secretaries,  
to department heads and executives, agents, building and mainte-  
nance employees, professional employees, department heads and  
all other supervisors as defined in the Labor-Management Act.

## ARTICLE II

### BARGAINING

SECTION 1: The Company, through its appointed representa-  
tives, will recognize the bona fide representatives of Office Em-  
ployees International Union, Local No. 27, as the exclusive repre-  
sentative of all the said employees at its Home Office in Galves-  
ton, Texas, for the purpose of collective bargaining in respect to

rates of pay, wages, hours of employment, and other conditions of employment.

SECTION 2: The Company will, pursuant to the provisions hereinafter contained, governing "grievances" provide for the handling on the Company's part of such disputes or  
123 disagreements as to interpretation and administration under the contract, presented as grievances, as shall arise during the term of the contract.

SECTION 3: The business representative of the Union shall have access only to the office of such representatives of the Company as shall be designated to receive him for the purpose of presenting grievances to such representatives. It is, of course, agreed that the Union will keep the Company advised as to the identity of its business representative and that the Company will keep the Union advised as to the identity of the Company representative designated to discuss such matters with him.

### ARTICLE III

#### FUNCTIONS AND PREROGATIVES OF MANAGEMENT

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling  
124 himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration.

### ARTICLE IV

#### PROMOTIONS AND DEMOTIONS

For the purposes of this article, the term "promotion" means the elevation of an employee from one lettered classification in the attached wage promotion plan to the next higher lettered classification.

cation, and the term "demotion" means the lowering of an employee from one lettered classification in such attached wage promotion plan to the next lower lettered classification.

All promotions and demotions shall be approved in advance by a committee to be set up and continue in existence throughout the term of this contract, consisting of three (3) members designated by the company, and two (2) members designated by the Union, which union designated members shall be employees of the Company within the bargaining unit. One of the company designated representatives shall act as chairman of the committee.

All decisions of the committee shall be made by majority vote, the chairman voting only in case of a tie. Such voting shall be by secret ballot, each member of the committee being entitled to one vote only. The Union shall be entitled to have present, in an advisory capacity only, at such meetings, its local business repre-

125 sentative, and an international representative, who shall be entitled to participate in the discussions, but shall not be entitled to any vote. All decisions of such committee so reached by majority vote shall be recorded in minutes to be kept of such committee's meetings and shall be final and binding upon both the Union and the Company. Union shall be furnished with a copy of such minutes.

The Personnel Department of the Company shall, from time to time, in advance of making any promotions or demotions, recommend such promotions or demotions to the chairman of the committee. Upon receipt of such recommendations from the Personnel Department, the chairman of the committee shall notify the local business representative of the Union of the names of the employees to be affected by such promotion or demotion, and the character of the promotion or demotion recommended. Upon receipt by such business representative of such notice from the chairman of the committee he shall, within one (1) week thereafter, notify the chairman of the committee of the union's desire for discussion of any of such recommended promotions or demotions by the committee, and upon receipt of such notice from the business representative that such discussion and consideration is desired, the chairman will call such committee into session at the earliest agreeable time to all parties concerned, but in no event later than two (2) weeks from receipt of such notice from the business representative. In the event the Union, through its business representative, shall fail to notify the chairman of the committee that it desires discussion and determination as to any of such recommended promotions or demotions within one (1) week from receipt of such notice, then the chairman of the committee shall notify the Personnel Department of the Company that it is free to make such recommended promotion or demotion.

126 Where the service record, physical fitness, application, ability to perform the duties of a higher position, skill and efficiency of the employees recommended for promotion or demotion are relatively equal, the committee will consider seniority as outlined and defined in the succeeding article numbered 6 hereof, as the controlling factor in the approval or disapproval of such promotions and demotions.

Nothing contained in this article shall be construed in any manner limit the right of the Company to make such temporary assignments of work as may in its opinion be necessary to assure the uninterrupted continuance of its business.

## ARTICLE V

### DISCHARGE OF EMPLOYEES

SECTION 1: The Company agrees that upon discharge of any employee, upon demand from such employee, it will furnish to such employee a written statement as to the reason or reasons for discharge, and that such discharged employee may present as a grievance, under the machinery hereinafter provided, his dissatisfaction with such discharge. If the final determination of such grievance is that such discharged employee was unjustly discharged, such employee shall be reinstated immediately to his former position without loss of seniority rank and shall be entitled to compensation for time actually lost in each work week at his regular rate of pay.

SECTION 2: An employee who resigns or is laid off because of lack of work, will, upon his request, be furnished with a statement by the Company as to the character of his service with the Company.

127

## ARTICLE VI

### SENIORITY

Seniority shall be defined as the length of service since the last date of hiring. Length of service with the Company is the length of uninterrupted employment with the Company commencing with the latest date of hiring. For the purpose of promotions, seniority shall be based upon length of continuous service in the applicable job classification. The Company's record in respect to last employment date and length of service on each job classification shall be conclusive.

New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first three (3) months of actual employment and will receive no con-

tinuous service credit during such period. At the end of the probationary period the employee's seniority shall be retroactive to the date of hire.

Seniority will be lost by any act which breaks the continuous employment with the Company:

An employee who leaves the employ of the Company as a result of his induction into the Armed Forces of the United States, shall upon reinstatement on the Company's active payroll be given continuous service credit for the time served in the Armed Forces. Continuous service credit shall discontinue upon voluntary reenlistment in the Armed Services. It is understood that the Company shall reinstate as required by law, employees who left their positions upon induction into the Armed Forces of the United States.

128 Where a "Temporary employee" or a "Part-time employee" is permanently employed on full time, the aggregate of his temporary or part time period shall not be added to his period of regular employment in determining length of service, but his service shall date from the beginning of his most recent full time employment.

"Continuous Service" shall be broken by the quitting or discharge of an employee.

## ARTICLE VII

### WORK DAY AND WORK WEEK

The established work week shall consist of five consecutive days beginning on Monday, and the normal work day shall be eight hours of work which shall be consecutive except for a lunch period of one hour or less.

## ARTICLE VIII

### WAGES

SECTION 1: The Company shall pay the employees covered by this agreement wages in accordance with Exhibit "A" attached hereto and made a part hereof (hereinafter called the "regular rate").

SECTION 2: For work performed not in excess of forty (40) hours per work week, the Company shall pay wages at the regular rate.

SECTION 3: For any work performed in excess of forty hours per work week, the Company shall pay wages at one and  
129 one-half times the regular rate. When overtime work is required in any department or section thereof such overtime work shall be offered among the employees of such department or

section thereof equally, provided, however, that the Company reserves the right to put other employees of its own choosing on such work if, in the opinion of the Company, such act becomes necessary.

Section 4: Any employee required to work on the following days shall receive pay at the rate of two times the regular rate, and if not required to work on such days shall receive pay for such days at the regular rate.

New Year's Day

Fourth of July

Labor Day

Thanksgiving Day

Christmas Day

The afternoon of Christmas Eve

The afternoon of New Year's Eve

and if any such day (other than Christmas Eve or New Year's Eve) falls on a Sunday, then the following Monday shall be observed as the Holiday.

In the event Christmas Eve and New Year's Eve fall on either a Saturday or a Sunday, the afternoon of the preceding Fridays shall be observed as such half-holidays.

SECTION 5: Employees of this Company shall be paid at the regular rate for scheduled working time lost from employment with this Company on account of jury service.

130

## ARTICLE IX

### VACATIONS AND LEAVE

SECTION 1: Vacations with pay are granted after continuous full time service of one year. No vacations are granted to part time employees with less than twenty (20) hours of service per week. Part time employees with 20 hours or more per week of continuous service for one year or more are granted one-half of the vacation credits of full time employees.

No vacation/as provided in this article may be taken except during the period beginning April 1st and ending November 30th in any calendar year.

Employees whose last date of continuous employment began in the preceding calendar year receive 2 weeks vacation with pay upon completion of the first year of continuous service; except

that employees whose continuous service started in December of the previous calendar year receive 2 weeks vacation with pay upon completion of eleven months of continuous service.

Employees whose last date of continuous employment began earlier than in the preceding calendar year receive two (2) weeks vacation with pay which may be taken any time in the applicable calendar year during the vacation period stated above.

An additional day of vacation is allowed in lieu of a paid holiday within a vacation period. Vacations must be taken in periods of not less than five (5) consecutive working days.

131 No more than two weeks of paid vacation is allowed during any one calendar year. Vacations are not cumulative from year to year.

Pay-in lieu of vacation will be allowed upon termination of employment to employees whose date of continuous employment began earlier than in the preceding calendar year, provided the employee has given advance notice of at least two full weeks of this intention to terminate his employment and such termination of employment is effective after March 31st of the current year.

However, any vacation right that has been earned by employees whose continuous employment began in the preceding calendar year will be paid in lieu of vacation if termination of services occurs before the vacation has been taken.

No pro-rata vacation rights will accrue at any time and any vacation rights which a continuation of services might have secured will cease upon termination from the company's services.

"Continuous service" when used in determining vacation rights shall mean the period of uninterrupted employment from the date of last employment. The following interruptions resulting in absence from work shall not have detrimental effect upon the employee's "continuous service" record and shall be considered as time worked for the purpose of this section which is devoted exclusively to vacations:

- (a) Sickness or injury, proved by a physician's certificate or absence due to sickness when excused by an authorized representative of the company of a combined duration not exceeding six (6) weeks during first year of employment or two (2) months after one (1) year of employment.
- (b) Jury duty or compulsory appearance in Court.
- (c) Vacations in accordance with the provisions of this section.
- (d) Leave of absence of two (2) weeks or less during any one year.

Leave of absence in excess of two (2) weeks for reason other than disabling illness or accident will reduce vacation rights by

one-half ( $1\frac{1}{2}$ ) day for each such excess two (2) weeks of absence. Leave of absence due to sickness, injury or accident in excess of the period stipulated in part (a) above will reduce vacation right at the option of the Company by one (1) day for each additional month of absence. The Company's record in respect to last employment date and continuous service shall be conclusive.

Vacations will be assigned by the Department Manager and insofar as possible, consideration will be given to the employee's selection of the vacation time. Employees with seniority will have first choice for vacation dates, which choice will be granted provided the operating efficiency of the Company is not, in its opinion, thereby impaired, but the Department Manager shall not be required to consider seniority for the second week of vacation if an employee desires to split the vacation, or if after selection is made, a change in schedule is desired.

The Company reserves the right to schedule vacations in accordance with the conditions and requirement assuring uninterrupted operating service.

133 SECTION 2: During the life of this agreement, the Company agrees, during each calendar year, to grant leaves of absence for such employees as may be delegated by the Union to attend State and National conventions; provided, that the aggregate of such leaves shall not exceed four (4) persons in number and three (3) weeks in length. Within these limits the Union may use such leaves of absence as it sees fit; provided, that no more than two (2) employees of the Company shall be absent upon such leaves at the same time. The Union is required to give one week's advance written notice of the identity of the employees for whom such leaves of absence are desired, and seniority in respect to promotions and in respect to choice of vacation dates as to such employees shall not be affected by such leave of absence.

SECTION 3: Leave of absence shall be understood to mean an absence from work without pay, requested by an employee and consented to by the Company in advance, for an agreed period of time and for good cause. Any absence from work on the part of an employee without such prior agreement and consent by the Company, or his failure to report to work at the end of such leave, may at the option of the Company, be treated as a "quitting" on the part of such employee.

Requests for leave of absence must be submitted by the employee to the Department Manager. The Company retains the exclusive right to approve or disapprove requests for leave of absence. Seniority will not accumulate during a leave of absence

granted for reasons other than disabling illness or accident of the employee.

In the event of disabling illness or accident, the employee is requested to inform the Department Manager by 9:00 o'clock A. M. of the first day of absence for such cause in order to prevent possible termination of employment. Sick leave will then be allowed automatically for a period of time consistent with the nature of disabling illness or accident, but not exceeding thirty (30) days. The Company maintains the right to require satisfactory evidence or medical certificate to prove inability to work.

## ARTICLE X

### DISCRIMINATION AND UNION ACTIVITY

SECTION 1: The Company agrees that it will not interfere with, restrain, or coerce employees because of membership or lawful activity in the Union, nor will it, by discrimination in respect to hire, tenure of employment or any term or condition of employment, attempt to discourage membership in the Union.

SECTION 2: The Union agrees that neither the Union nor its members will intimidate or coerce the employees in respect to their right to work and will not attempt to force Union activity or membership on such employees. The Union further agrees that there shall be no solicitation of employees for Union membership on Company time. The Union shall not discriminate in any way as to the admission to or membership in the Union, or otherwise, against any persons who are now, or hereafter may be, employed or be restored to or reinstated in employment by the Company, provided such persons meet the requirements of the Union constitution and by-laws as to eligibility for membership.

SECTION 3: Both the Company and the Union recognize that neither membership nor non-membership in the Union is a requirement for the obtaining or retaining of employment with the Company.

## ARTICLE XI

### STRIKES AND LOCKOUTS

There shall be no strikes, slow-downs or work stoppages of any kind during the life of this agreement, and there shall be no lockout of employees by the Company during said term.

## ARTICLE XII

## GRIEVANCES

SECTION 1: Discussion of request or complaint. Any employee who believes that he has a justifiable request or complaint shall discuss the request or complaint with his or her immediate superior in an attempt to settle it.

SECTION 2: Definition of Grievance. "Grievance" as used in this agreement is limited to a complaint which has not been settled as a result of the discussion required in Section 1 hereof, or which involves the interpretation or application of, or compliance with, the provisions of this agreement.

## SECTION 3: Grievance Procedure.

(a) A grievance which has not been settled within 5 days as a result of the discussion required in Section 1 hereof, to be  
136 considered further must be filed promptly in writing with the employee's Assistant Department Head stating fully the nature of the grievance and the grounds for complaint or dissatisfaction. The Assistant Department Head shall answer the grievance within 10 days from date of presentation in writing, signing and dating his reply and returning one copy thereof to the employee or the steward. If the Assistant Department Head's decision is not appealed within 10 days, the grievance shall be considered on the basis of the decision made and shall not be eligible for further appeal.

(b) In order for a grievance to be considered further, it shall be appealed in writing to the Department Manager within 10 days from the date of the Assistant Department Head's written reply. An appealed grievance shall be discussed in an attempt of settlement at a mutually convenient time between the steward or employee and the Department Manager and answered within 10 days from appeal. The Department Manager's decision in writing, after signing and dating it, shall be given to the steward or employee. If the Department Manager's decision is not appealed within 10 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

(c) In order for a grievance to be considered further, written notice of appeal by the business representative of the Union shall be served to the Company's Secretary, or his delegated representative, within 10 days of the date of the Department Manager's written decision. Discussion of the appealed grievance shall take place at the earliest date of mutual convenience following receipt of the notice of appeal, but not later than 15 days after notice is received by the Company's Secretary, or his delegated repre-

representative, unless by mutual agreement a different date for disposition is agreed upon.

137 Grievances discussed in such meetings shall be answered in writing by the representative of the Company within 15 days after the date of such meeting; unless by mutual agreement a different date for disposition is agreed upon. Whenever either party concludes that further meetings can not contribute to the settlement of the grievance, the dissatisfied party may, by written notice within 15 days from the date of the written decision of the last previous meeting, appeal the grievance to arbitration, provided the grievance is subject to review by arbitration under the terms of this contract.

SECTION 4: If either party shall elect to submit a grievance to arbitration, it shall give written notice to the other party of intention to arbitrate. Such notice shall contain a statement specifying the grievance. Upon receipt of any such notice, the parties shall, at the earliest date of mutual convenience, confer in an effort to select by mutual consent, an impartial board of arbitration.

The board of arbitration shall consist of one arbitrator appointed by the Union and another by the Company and a third appointed by the first two arbitrators. In the event that the first two arbitrators are unable to agree on the appointment of the third arbitrator, such third arbitrator shall be appointed by the Senior District Judge of the United States District Court for the Southern District of Texas.

The expense incident to the appointment and services of the third arbitrator shall be borne equally by the Union and the Company.

SECTION 5: Nothing in this Article shall be construed to deprive any individual employee or group of employees of their right at any time to present grievances to the Company or to have such grievances adjusted without the intervention of the Union, as long as the adjustment shall not be inconsistent with the terms of this contract, and provided the Union is given notice and opportunity to be present at such adjustment.

### ARTICLE XIII

It is agreed that the Union shall be furnished space for the posting of proper notices, the location and area of such space to be agreed upon between the Company and the Union.

## ARTICLE XIV

## CONDITIONS

This agreement is subject to the provisions of existing laws, regulations, applicable Executive Orders, and other orders of duly constituted authorities of the United States and the State of Texas, which are now and may hereafter be in force during the term of this agreement.

## ARTICLE XV

## TERM

This agreement shall remain in full force and effect until July 12, 1951, provided, that unless one party shall give written notice to the contrary to the other party not later than sixty (60) days prior to such expiration date, this agreement shall be automatically renewed for a period of one year from such expiration date. Unless similar notice be given by one party to the other, such agreement as so renewed shall be automatically renewed for another period of one year.

In Witness Whereof, the parties hereto have executed this agreement this thirteenth day of January, 1950.

OFFICE EMPLOYEES INTERNATIONAL UNION

LOCAL NO. 27, A. F. OF L.,

A. G. WILSON,

JEANNE V. BEAL,

LEE V. IMLAY,

SHIRLEY DIAL.

AMERICAN NATIONAL INSURANCE COMPANY,

By L. MOSELE,

*Secretary-Comptroller.*

## Anico Wage Promotion Plan, Schedule "A" Sheet 1

140

Job class	Starting salary	6 mos.	12 mos.	1½ yrs.	2 yrs.	2½ yrs.	3 yrs.	3½ yrs.	4 yrs.	4½ yrs.	5 yrs.	6 yrs.	7 yrs.	8 yrs.	9 yrs.	10 yrs.	11 yrs.
A	\$130																
B	130	\$125	\$140		\$145		\$150		\$155								
C	130	145	150		155		160		165								
D	130	155	160		170	\$175	180	\$185	190	\$195	\$170	\$175	\$220	\$230	\$210	\$250	
E	170	180	190		200		220		230		240	250	260	270	280	290	\$300

## SCHEDULE A SHEET 2

## Merit Rating Score Necessary for Salary Increases—

In addition to the required length of service shown in the wage promotion plan, L. O. M. A. Standard merit-rating scores as indicated below are necessary in order to qualify for the salary increases under the Wage Promotion Plan:

Job classification	If salary is—	Merit rating score required to qualify for next higher wage bracket	Job classification	If salary is—	Merit rating score required to qualify for next higher wage bracket
B.....	\$130.00	Automatic	D.....	\$150.00	Slightly below average
B.....	135.00	Average	D.....	160.00	Average
B.....	140.00	Slightly above average	D.....	175.00	Slightly above average
B.....	145.00	Moderately above average	D.....	190.00	Moderately above average
B.....	150.00	Considerably above average	D.....	210.00	Considerably above average
C.....	140.00	Automatic	E.....	170.00	Slightly below average
C.....	145.00	Average	E.....	185.00	Average
C.....	150.00	Average	E.....	205.00	Slightly above average
C.....	155.00	Slightly above average	E.....	225.00	Moderately above average
C.....	160.00	Slightly above average	E.....	245.00	Considerably above average
C.....	165.00	Moderately above average	E.....	275.00	Distinctly superior
C.....	170.00	Considerably above average			

## Minimum Merit Rating Score Requirement—

142 All job classifications require a minimum merit rating

L. O. M. A. standard score comparable to a rating of "slightly below average". Employees are expected to maintain the necessary merit rating grades which are needed for the applicable salary scale. Where the latest rating produces a score that is below the applicable salary scale, the company will so inform the employee, and will explain the reasons for the lower rating. The company reserves the exclusive right to put the employee on a period of probation, or to reduce the salary to the rate applicable for the corresponding merit score, or to demote to the next lower job classification with a reduction in the rate of pay, or to discharge the employee at the expiration of the probationary period.

## SCHEDULE A SHEET 3

## Special recognition—

The company will give consideration to special recognition in the rate of pay within the maximum rate for job classifications "D" and "E" where distinctly superior ability and job performance are in evidence.

## Promotions to next higher job classification—

In addition to the company's rules and requirements governing promotions, the following conditions must be met:

From A to B Requirement of 6 months continuous service on the "A" classification job and a minimum merit-rating score of

"slightly above average". The employee must submit and successfully pass the company's written test for "B" classification jobs.

143 From B to C Requirement of 6 months or more of continuous service on "B" classification job and a minimum merit rating score of "moderately above average". The employee must submit and pass successfully the company's written test for "C" classification jobs. A salary increase of \$5.00 per month is allowed upon the official promotion; thereafter, all subsequent salary increases in the new wage bracket and the new job classification are dated from the official date of the promotion.

From C to D Requirement of 6 months of continuous service on "B" classification job and 12 months of continuous service on "C" classification job, or 1½ years of continuous service on "C" classification job; and a minimum merit rating score of "moderately above average". The employee must submit and pass successfully the company's written test for "D" classification jobs when required. A salary increase of \$5.00 per month is allowed upon the official promotion; thereafter, all subsequent salary increases in the new wage bracket and the new job classification are dated from the official date of the promotion.

From D to E Requirement of 1½ years of continuous service on "D" classification job and a minimum merit rating score of "considerably above average". A salary increase of an amount that is the difference between the employee's rate of pay before promotion and the next higher wage bracket in the "D" wage promotion plan. Thereafter all subsequent salary increases in the new wage bracket and job classification are dated from the official date of the promotion.

144

*Exhibit "A-1" to motion*

AMERICAN NATIONAL INSURANCE CO.

W. L. MOODY, JR., PRESIDENT

GALVESTON, TEXAS

January 23, 1950.

EMPLOYEES OF AMERICAN NATIONAL  
INSURANCE COMPANY.

LADIES AND GENTLEMEN: Enclosed please find copy of contract which has been entered into between American National Insurance Company and Office Employees International Union, Local No. 27. This contract runs until July 12, 1951, and covers the rates of pay, wages, hours of employment and other conditions of employment of all employees of American National within

the bargaining unit, whether such employees are members of such Union or not.

We wish to call your attention to Article X of said contract, reading as follows:

**"Discrimination and Union Activity:**

SECTION 1: The Company agrees that it will not interfere with, restrain, or coerce employees because of membership or lawful activity in the Union, nor will it, by discrimination in respect to hire, tenure of employment or any term or condition of employment, attempt to discourage membership in the Union.

SECTION 2: The Union agrees that neither the Union nor its members will intimidate or coerce the employees in respect to their right to work and will not attempt to force Union activity or membership on such employees. The Union further agrees that there shall be no solicitation of employees for Union membership on Company time. The Union shall not discriminate in any way as to the admission to or membership in the Union, or otherwise, against any persons who are now, or hereafter may be, employed or be restored or reinstated in employment by the Company, provided such persons meet the requirements of the Union constitution and by-laws as to eligibility for membership.

SECTION 3: Both the Company and the Union recognize that neither membership nor non-membership in the Union is a requirement for the obtaining or retaining of employment with the Company."

We likewise wish to call your attention to the following provision of Texas law:

Article 5207a. Right to bargain freely not to be denied; membership in labor union

SECTION 1: The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

SECTION 2: No person shall be denied employment on account of membership or non-membership in a labor union.

SECTION 3: Any contract which requires or prescribes that employees or applicants for employment in order to work for an employer shall or shall not be or remain members of a labor union, shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of any existing contract and to any new agreement or contract executed after the effective date of this Act."

From the above, you will see that it was not necessary for you to be or become a member of the Union to obtain employment with

American National, and that it is not necessary and will not become necessary for you to be or for you to become or remain a member of the Union to retain your employment with American National. The decision as to whether or not you become or remain a member of the Union is entirely your own to make and you should at all times keep this fact in mind.

Yours very truly,

AMERICAN NATIONAL INSURANCE COMPANY,  
By L. MOSELE,  
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL #27,  
By A. G. WILSON.

P. S.—We find that the provision as to paid sick leave was omitted from the draft of the contract mentioned in the foregoing letter through inadvertence. Such paragraph reads as follows, and should be inserted as Section IV of Article IX of said contract:

**"Paid Sick Leave:**

147 An employee who becomes ill or disabled and is unable to work and makes proper report of his illness or disability to the company will upon approval by the company receive sick leave with pay as follows:

(a) During the first three (3) months of service—no paid sick leave.

(b) During remaining nine (9) months of first year service—10 days.

(c) Every year thereafter—10 days.

The company retains the exclusive right to determine the granting or disallowing of sick leave with pay. It further retains the right to require satisfactory evidence or medical certificate to prove ability or inability to work.

Part time employees are not eligible for paid sick leave.

AMERICAN NATIONAL INSURANCE COMPANY,  
By L. MOSELE,  
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL #27,  
By A. G. WILSON.

148

Before National Labor Relations Board  
Case No. 39-CA-33

[Title omitted.]

*Decision and order*

On October 11, 1949, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. Thereafter all parties filed exceptions to the Intermediate Report and supporting briefs.<sup>3</sup>

The Board<sup>4</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications, additions, and exceptions noted below:

We agree with the Trial Examiner that the Respondent did not in good faith bargain collectively with the Union, as the duly certified representative of the Respondent's employees in an appropriate unit, within the meaning of Sections (a) (5) and (1) of the Act. It is clear that from the inception of negotiations the chief obstacle to agreement was the Respondent's inflexible position that it would not conclude any contract with the Union unless it accepted the Respondent's so-called prerogative clause, either in the original or amended form, as described in the Intermediate Report. By this clause the Respondent sought to reserve to itself the exclusive right to determine unilaterally such terms and conditions of employment as working rules, work schedules, the establishment of extra shifts, lay-off policy, lunch periods, the granting of leave of absence, and distribution of overtime. Indeed, during negotiations the Respondent, under its asserted claim of management prerogative, unilaterally changed the lunch period and established a night shift in various

<sup>3</sup> As the record, the exceptions, and the briefs adequately present the issues and positions of the parties, the Respondent's request for oral argument is denied.

<sup>4</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

departments, without first discussing these matters with the Union. The Respondent's concepts concerning its management prerogatives so pervaded the negotiations that every effort by the Union to bypass this issue and proceed with other matters was met with frustration. Nor was the Union any more successful in its offer to accept the Respondent's demands provided that disputes arising under the contract were made subject to arbitration. The Respondent refused to qualify its asserted management prerogatives.

150 It is well settled that the matters, with respect to which the Respondent sought to reserve the right to take, and actually took, unilateral action, affecting, as they did, terms and conditions of employment, are proper subjects for collective bargaining. In these circumstances, it can hardly be said that the Respondent's insistence on excluding these subjects from the area of collective bargaining, as a condition of agreement, or its conduct in unilaterally changing the lunch period and establishing a night shift, was consonant with the good faith bargaining envisaged by the Act.<sup>5</sup> Moreover, we find that the Respondent's demand for the prerogative clause as a condition to making a contract and its unilateral action were in derogation of the Union's bargaining rights secured to it by Section 9 (a) <sup>6</sup> as the exclusive representative of the Respondent's employees and therefore constituted, quite a part of the Respondent's demonstrated bad faith, per se violations of Section 8 (a) (5) and (1).<sup>7</sup>

The Respondent argues that it was privileged under Section 8 (d) <sup>8</sup> to refuse to recede from its position  
154 concerning its asserted management prerogatives. True, Section 8 (d) does not require any party to make any concession. But this does not mean that any party may thereby preclude agreement by maintaining a position which is inconsistent with the bargaining rights of the other party. A contrary interpretation would not only frustrate the declared policy of

<sup>5</sup> *Singer Manufacturing Company v. N. L. R. B.*, 119 F. 2d 131 (C. A. 7), certiorari denied 313 U. S. 595; *V-O Milling Company*, 43 N. L. R. B. 348; *South Carolina Granite Company*, 58 N. L. R. B. 1448.

<sup>6</sup> Insofar as pertinent, Section 9 (a) provides:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

<sup>7</sup> See, for example, *N. L. R. B. v. J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied, 335 U. S. 814. Insofar as the views expressed by the Trial Examiner in the Intermediate Report are inconsistent with our decision, they are rejected.

<sup>8</sup> The relevant portion of Section 8 (d) reads as follows:

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The Act "to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining,"<sup>9</sup> but also could not be reconciled with the express language of Section 8 (d) which defines the bargaining obligation of the employer and the representative of the employees to include the duty "to confer in good faith with respect to wages, hours, and other terms and conditions of employment." Moreover, Section 8 (d), which substantially codifies the bargaining standards developed under the Wagner Act, clearly contemplates that the parties approach the bargaining table with an open mind and not, as the Respondent did here, with a fixed determination to avoid agreement unless the Union relinquished a significant portion of its bargaining rights.

Accordingly, we find that the Respondent, by insisting on the so-called prerogative clause as a condition of agreement, by taking unilateral action with respect to matters properly belonging to the area of collective bargaining, without consulting the Union, and by the lack of good faith which is evident from its whole course of purported bargaining with the Union, failed to perform its statutory obligation to bargain, in violation of 152 Section 8 (a) (5) of the Act, and thereby interfered with, restrained, and coerced its employees in the exercise of their guaranteed rights in violation of Section 8 (a) (1) of the Act.

#### THE REMEDY

After the issuance of the Intermediate Report, the Respondent advised the Board that it had signed a collective bargaining agreement with the Union. It therefore moves to dismiss the refusal-to-bargain charges on the ground that they have become moot by reason of this agreement. The Union opposes this application, contending that the Respondent's past conduct indicates the necessity for protecting future negotiations between the parties and that the Board should enter its customary remedial order. We find no merit in the Respondent's motion and we hereby deny it.

It is well settled that the discontinuance of unfair labor practice does not render moot charges based thereon. For this reason, and in view of the fact that the Respondent has shown a disregard for its bargaining obligations, and in view of its other conduct which is found to require the entry of a broad form of cease and

<sup>9</sup> Section 1 of the Act. We are unable to share the Trial Examiner's opinion that economic strength is still the determinative factor in achieving success at the bargaining table. Both the declared policy and express language of the Act contemplate stabilizing labor-management relations by substituting good faith bargaining for industrial warfare.

desist order, we find that effectuation of the policies of the Act requires that the Respondent be directed to cease and desist from refusing to bargain in good faith by imposing, as a condition of agreement, that the Union, as the exclusive bargaining representative of the Respondent's employees in the appropriate unit, agree to a provision, such as the prerogative clause involved herein, whereby the Respondent reserves to itself the right to take unilateral action with respect to matters properly belonging to the field of collective bargaining. We shall further direct the Respondent, upon request, to bargain collectively with the Union with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We shall also direct the Respondent to refrain from the various acts of interference, restraint, and coercion, in which it has been found the Respondent has engaged, and from other conduct proscribed by the Act which we, like the Trial Examiner, find may reasonably be anticipated from its past acts.

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders the American National Insurance Company, Galveston, Texas, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all of its employees at its Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act, by insisting as a condition of agreement, that the said Union agree to a provision whereby the Respondent reserves to itself the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment;

154 (b) Interrogating employees concerning their union membership and sympathies and union activities; threatening to sell its business before it would sign a contract with the above-named Union; warning its employees that periodic wage increases and privileges would be discontinued if the said Union succeeded in its organizational campaign; requesting its employees to solicit anti-union votes in any election to determine the bargaining representative of its employees; and in any other manner interfering with, restraining, or coercing its employees in the

exercise of the right to self-organization, to form, join, or assist Office Employees International Union, A. F. L., Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all its employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its office in Galveston, Texas, copies of the notice attached hereto as an Appendix.<sup>10</sup> Copies of such notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director, for the Sixteenth Region (Fort Worth, Tex.) in writing, within ten (10) days from the date of receipt of this Order, what steps the Respondent has taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminatorily discharged Emma Moore.

Signed at Washington, D. C., this 5 day of April 1950.

PAUL M. HERZOG,

*Chairman,*

JOHN M. HOUSTON,

*Member,*

ABE MURDOCK,

*Member,*

*National Labor Relations Board.*

[SEAL]

<sup>10</sup> In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "Decree of the United States Court of Appeals Enforcing."

## APPENDIX

*Notice to All Employees*

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not refuse to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all our employees at our Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act, by insisting, as a condition of agreement, that the said union agree to a provision whereby we reserve to ourselves the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

We Will bargain collectively, upon request, with the above-named labor organization as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We Will Not interrogate our employees concerning their union membership and sympathies and union activities; threaten to sell our business before we would sign any contract with the above-named union; warn our employees that periodic wage increases and privileges would be discontinued if the above-named union succeeded in its organizational campaign; request our employees to solicit anti-union votes in any election to determine a bargaining representative of our employees; or in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist Office Employees International Union, A. F. L., Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

AMERICAN NATIONAL INSURANCE COMPANY,

(Employer),

By \_\_\_\_\_  
(Representative), (Title).

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by an other material.

158 Before National Labor Relations Board

[Title omitted.]

E. Don Wilson, Esq., of Fort Worth, Tex., for the General Counsel.

Louis J. Dibrell, Esq., and Charles G. Dibrell, Esq., of Dibrell, Dibrell, and Greer, and Mr. Leonard Mosele, all of Galveston, Tex., for respondent.

Mr. C. A. Stafford, of Port Arthur, Tex., and Mr. A. G. Wilson, of Galveston, Tex., for the Union.

*Intermediate report and recommended order*

*Statement of the Case*

Upon a charge duly filed January 28, 1949, by Office Employees International Union, A. F. L., Local No. 27, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued his complaint dated June 30, 1949, 159 against American National Insurance Company, Galveston, Texas, therein called respondent, alleging that respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act (61 Stat. 136), herein called the Act. Copies of the charge, the complaint, and a notice of hearing were duly served upon respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that respondent: (1) on a number of occasions from about July 28, 1948, to the date the complaint issued, interrogated employees concerning their membership in the Union and threatened employees for the purpose of discouraging membership in or activity in behalf of the Union; (2) discriminatorily discharged employee Emma Moore on or about January 5, 1949; and (3) from on or about November 30, 1948, refused to bargain with the Union, the majority representative of its employees in an appropriate unit.

Respondent's answer, dated July 21, 1949, admits certain of the allegations in the complaint concerning jurisdiction, admits that at times material herein the Union was the duly designated majority representative of the employees in an appropriate unit, but denies the commission of unfair labor practices.

Pursuant to notice, a hearing was held from July 26 through August 3, 1949, in Galveston, Texas, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and respondent were represented by counsel, the Union by two of its officers. All parties participated in the hearing and were afforded full opportunity to be heard, to  
 160 examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the opening of the hearing, I denied respondent's motion for a bill of particulars with respect to the alleged refusal to bargain. During the course of the hearing and at its close, counsel for respondent made several motions which amounted to a motion to dismiss the complaint in its entirety. I denied the motions made during the course of the hearing and reserved ruling upon those made at the close. The motions are disposed of in the body of this report. A brief and proposed findings and conclusions have been received from respondent.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT <sup>11</sup>

##### I. THE BUSINESS OF RESPONDENT

Respondent is a Texas corporation with its principal office and place of business in Galveston, Texas, engaged, in Texas, in 30 other States of the United States, and in the District of Columbia, in soliciting and issuing ordinary and industrial life insurance policies and annuity contracts, and in the investment of funds in real estate mortgages and other securities. In the course and conduct of its business, insurance premiums, payments of policy obligations, and other communications flow between the principal office in Galveston and points outside the State of Texas. Respondent's operations require the constant employment of interstate communications and transportation facilities.

##### 161 II. THE ORGANIZATION INVOLVED

Office Employees International Union, Local No. 27, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of respondent.

<sup>11</sup> Respondent's proposed findings and conclusions insofar as relevant and material are disposed of hereinafter.

### III. THE UNFAIR LABOR PRACTICES

#### A. Interference, restraint, and coercion

Witnesses called by the General Counsel testified that L. H. Peacock, assistant manager of the ordinary policy issue department:

(1) On or about August 25, 1948, questioned employee Jeanine Beal concerning happenings at a meeting of the Union held on the evening of August 24.

(2) On or about November 29, 1948, asked employee Ellen Neill if she knew anything about the Union, if she had attended Union meetings, and if she belonged to the Union. In December 1948, or January 1949, again asked Neill if she belonged to the Union, or if she knew anything about the Union, asked her to relate what took place in Union meetings, and asserted that Neill would have "better advantages outside the Union."

(3) On or about August 15, 1948, asked employee Ernestine Rincon if she "knew" anything about the Union and stated that W. L. Moody, Jr., respondent's president, would sell the business before signing a contract with the Union. On or about September 1, 1948, inquired of Rincon concerning matters discussed at Union meetings and sought to learn what promises were made to employees by Union representatives.

162 (4) On or about August 15, 1948, asked employee Elvira Martinez what she "knew" about the Union and suggested that if Martinez would tell other employees to vote against the Union,<sup>12</sup> she might receive a raise in pay.

(5) In January or February 1949, told employee Josephine Cortez who upon this occasion was requesting a raise in pay, that if it were not for the Union, he could grant her request and asked Cortez if she attended Union meetings.

(6) On or about September 1, 1948, asked employee Ruby Sandros if she paid dues to the Union.

(7) During the period from approximately August 9 to August 12, 1948, on one occasion asked employee Shirley Dial what she thought about the Union and what she knew about it, if she had signed a "card," if she thought Mr. Moody would sign a contract with the Union, and stated, "you will never get a Union in here. Moody has too much power." In a day or two called Dial to his desk and suggested that Dial might be misleading other employees into joining the Union. Shortly thereafter came to Dial's working place and asked her if she still favored the Union, told her that even had she signed a union authorization she need not

<sup>12</sup> A representation election was conducted by representatives of the Board on August 19, 1948.

join the organization, and warned that if the Union "went through" periodic wage increases would be discontinued, privileges would be taken away from employees, and that even though his authority to hire and discharge would be curtailed, he would still retain some power in that respect.

On or about August 26, 1948, asked Dial to tell him what took place in Union meetings, and in January 1949, when Dial received a periodic increase, remarked, "Shirley, the Company is giving you a five dollar raise even though you are Union."

The evidence recited above was related in a convincing manner by the employees who participated in the conversations with Peacock and, as Peacock was not called as a witness, is completely uncontroverted. It is believed.

The parties stipulated at the hearing that Peacock is a supervisor within the meaning of the Act and the evidence establishes that he exercises authority over about 75 employees. I find that his statements and conduct are attributable to respondent.

I find therefore that by interrogating employees concerning their interest in, membership in, or payment of dues to the Union; by inquiring of employees as to what took place in Union meetings and who attended; by asserting to an employee that the business would be sold before respondent would sign a contract with the Union; by suggesting that an employee's wages might be increased if she would attempt to persuade employees to vote against the Union; by asserting that the Union prevented the raising of an employee's wages; by threatening that Union organization would result in the discontinuance of periodic wage increases and the deprivation of privileges; by warning that even in the event of Union organization, authority would remain in respondent to hire and discharge;<sup>13</sup> and by strongly suggesting that membership in the Union was a factor which was considered in granting periodic wage increases, respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

#### 134 B. The alleged discriminatory discharge of Emma Moore

Moore began her employment with respondent on December 2, 1946, as a clerk at a monthly salary of \$85. She joined the Union in the summer of 1948, and was one of the Union's observers at the August 19 election.

<sup>13</sup> True, of course, but in context the statement is a threat that those who adhered to the Union would be regarded unfavorably.

On October 13, 1948, Moore was transferred to another department and upon this occasion, she testified, C. J. Sparke, manager of the department she was leaving remarked, "You are one of the employees I hate to see transferred out." According to Moore, working conditions in the new department were inferior to those in the department which she left—that her new working place was dirty, ill-lighted, and permeated with offensive odors. A week or two after the transfer, according to Moore, C. L. Axelson, manager of the file room where she worked, called her aside, told her that the transfer was occasioned by her union activity, warned her that union activity would not be tolerated in his department, threatened that anyone "that has anything to say or do about the Union will not have a job up here," asked her if she had signed a "card" for the Union, and inquired how many cards she had distributed among the employees in the file room.

Moore testified that her work in the file room was never the subject of criticism but that, nonetheless, on January 5, 1949, Axelson handed her a pay check and told her that she was discharged for misfiling applications.

Moore worked on a section of files which, generally, required more attention than other sections and frequently was assisted in filing by others in the file room.

165 Manager Axelson testified that he considered Moore a satisfactory employee for about the first 6 weeks she worked under him but that complaints as to misfilings in her section began to reach him thereafter. In late November, according to Axelson, another employee, Oveda Sellers, complained to him that Moore had threatened that Sellers would be discharged if she did not join the Union and that even if she did join the Union she must keep her dues paid in order to remain in her employment. Axelson told Sellers that she need not join the Union, that the choice was hers. That afternoon Axelson assembled the file room employees and made substantially the same statement to them.

Axelson, according to his testimony, called Moore aside, asked her if she had so threatened Sellers, and told her that such conduct would not be tolerated. Moore then denied that she had approached Sellers in such a manner and denied that she was a member of the Union.

Thereafter, Axelson testified, Moore did not come to his attention in connection with any Union activity but complaints as to misfiling in her section became increasingly frequent. As a result, Axelson testified, he caused a check to be made upon Moore's work for a period of 5 days which indicated that she was misfiling about 75 percent of the files sent to her. It was then that she

was discharged. A check of her section revealed, according to Axelson, 100 misplaced files.

Rose Vento, Moore's supervisor, and other employees in the file room supported Axelson's testimony concerning Moore's deficiencies in her work performance.

166 Both Axelson and Vento impressed me favorably. I find that Axelson did not threaten Moore with discharge if she talked about the Union and did not inquire if she was a member of or a solicitor for the Union. I find that Moore was careless in the performance of her work and that it was her persistent errors in filing which motivated respondent in discharging her. Even if it is true, as the General Counsel suggests, that some of Moore's coworkers by carelessness or design were responsible for some if not all of the errors, I am convinced that Axelson reasonably believed Moore to be the one at fault. Thus even if her discharge were based upon a misplacing of blame, so long as it was not motivated by considerations of union membership or activity, as alleged, it did not amount to a violation of the Act. I so find.

### C. The refusal to bargain

#### 1. The appropriate unit

The parties agree, the evidence indicates, and I find that all employees employed at respondent's Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined by the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### 2. The Union's majority in the unit

The parties agree, the evidence indicates, and I find that on August 19, 1948, the Union was and at all times material since has been the duly designated representative within the meaning of Section 9 (a) of the Act of all the employees in the appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

#### 3. The refusal to bargain

The evidence is without substantial dispute that the parties met frequently, that information requested by the Union if not always promptly supplied was given, that respondent's representatives

were clothed with authority to negotiate a contract binding upon respondent, and that respondent did offer to enter into a contract if the Union would agree to its terms.

Upon request of the Union, the parties met on November 30 when the Union then presented respondent with a form of contract covering conditions of employment but silent as to wages. The provisions of the proposed contract were read and explained by the Union representative, who requested that an attempt be made to arrive at a tentative agreement upon the proposals before turning to wages. No agreement was reached except to meet again on December 15. At this second meeting the Union presented its wage proposals<sup>14</sup> which sought to establish a wage range from \$167.50 to \$400 a month in contrast to the then existing scale which started at \$85. Respondent asked for adjournment to January 10, 1949, and the Union representatives, protesting that so long a recess was unnecessary and unreasonable, reluctantly acceded to that request.

On January 10, respondent proposed a clause to be incorporated in a contract providing:

The right to select, hire, to promote, demote, discharge, discipline for cause, to maintain discipline and efficiency of employees, and to determine schedules of work is the sole prerogative of the Company and the Company's decision with respect to such matters shall never be the subject of arbitration.

C. A. Stafford, the principal negotiator for the Union, objected that if the Union were to accept such a provision it would be abdicating the rights secured to it by certification. The Union, according to Stafford, attempted to secure agreement on other proposed provisions but the effect of respondent's proposal so pervaded the field of bargaining that all paths of discussion appeared to be blocked by it. As a result the meetings were adjourned on January 12 without agreement on any substantial provisions of a contract.<sup>15</sup> The position of respondent, according to Stafford was expressed to be that the "prerogative clause," as it came to be called, must be incorporated in any contract to which it was a party. On the other hand, Stafford stated during these conferences that the Union could not agree to the "prerogative clause" no matter what other concessions respondent might make but refused to agree to respondent's suggestion that an impasse had been reached.

The parties next met on January 18, when, according to Stafford, respondent's position remained unchanged. It still insisted upon

<sup>14</sup> At a later meeting, the Union indicated that it would settle for less by suggesting a wage increase of 10 cents an hour.

<sup>15</sup> The parties had agreed to a recognition clause, a no-strike clause, and for elimination of physical examination of employees.

the "prerogative clause," expressed willingness to contract that the terms of the Fair Labor Standards Act and other applicable statutes would govern the rights of employees, where pertinent, and suggested that if the respondent administered the "prerogative clause" unfairly, the Union would have recourse to the Board.

169 Stafford accused respondent of failure to bargain in good faith to which respondent replied that the Act did not require it to recede from its position. This statement referred, according to Stafford, not only to the "prerogative clause" but also to the expressed position of respondent that it would not make concessions on wages. During the meeting, respondent presented its counterproposals to the form of contract which the Union had earlier submitted whereupon the meeting recessed until the following day.

On January 19, the "prerogative clause," as restated with some change in the counterproposals, again was the principal topic of discussion. The Union agreed to accept the first paragraph of the clause but continued to assert that the inclusion of the remainder in a contract would subvert its status as bargaining representative.

As amended by respondent's counterproposals the "prerogative clause" reads:

Nothing in this agreement shall be deemed to limit or restrict the company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge or otherwise discipline an employee for violation of such rules or for other proper cause.

The right to select and hire, to promote to a better position, to discharge, demote or discipline for cause, and to maintain discipline and efficiency of employees and to determine the schedules of work is recognized by both union and company as the proper responsibility and prerogative of management to be held  
170 and exercised by the company, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the company in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration.

According to Stafford, respondent described the above clause as the "meat of the contract" and that if the Union would accept it, a contract could be arrived at quickly. This position, Stafford

testified, was reiterated at subsequent meetings and was met by statements from the Union negotiators that such a clause would make any contract meaningless from the Union's standpoint—that it would deprive the Union of rights to which its certification under the Act entitled it.

Respondent's position on wages, Stafford testified credibly, was that insurance premium rates were fixed by law and by contract, that higher wages could not be passed along by raising rates, and that respondent would not pay wage increases out of profits.

Stafford first asked in January for respondent's financial statement and in February or March for a list of employees showing wage classifications. Respondent at first refused such information but finally, after July 6, 1949, complied with the request.

In May, the Union secured the services of an attorney and on May 19, represented by counsel, met with respondent. At 171 this meeting a new proposed contract was submitted by the

Union, accepting respondent's existing wage scale, vacation and sick leave schedule, and the "prerogative clause" proposed by respondent adding only, with respondent's agreement, that in hiring, promoting, discharging, etc., respondent would act in a "fair and just manner."

Respondent's objection to the proposed contract was that all matters in dispute arising under any contract provision would be subject to arbitration.

This was the posture of the parties at the time of the hearing. Respondent has been at all times ready to meet with the Union, to discuss its proposals, and to enter into a contract containing a non-arbitrable "prerogative clause" and describing the existing wages, hours of employment, and other conditions of employment. During the course of negotiations respondent agreed, tentatively, to a more liberal vacation plan.

During negotiations, counsel for respondent referred frequently to the fact that the Act does not require parties in the process of bargaining to make concessions or to retreat from a position once taken. The statutory provision referred to, Section 8 (d), so far as here applicable, reads:

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if 172 requested by either party but such obligation does not compel either party to agree to a proposal or require the making of a concession.

I do not believe that this clause "serves to operate a change in rights of parties as they existed under the Act before amendment. In one of its first decisions under that statute, the Supreme Court said:

The Act does not compel agreements between employer and employees. It does not compel any agreement whatever. It does not prevent an employer "from refusing to make a collective contract and hiring individuals on whatever terms" the employer "may by unilateral action determine. . . ." The theory of the Act is that free opportunity for negotiations with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel. . . ." *N. L. R. B. v. Jones Laughlin Steel Corp.*, 301 U. S. 1, 45 (April 12, 1937).

Section 8 (d) does no more, in my opinion, than to incorporate this decisional concept in the Act.<sup>16</sup>

There is no doubt that respondent here had a right to insist upon the inclusion of the "prerogative clause" in any contract. I find, contrary to the contention of the General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to  
173 agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment more favorable than those then existing. Assuming, but of course not deciding, that respondent's employees were ill-paid and that respondent could well afford to grant a wage increase, it was under no legal compulsion to do so. True, the Act recognizes (Section 1) that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce but in ameliorating this condition the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table.

It is argued further, however, that the intransigence of respondent is, in itself, evidence of bad faith—that respondent by its refusal to grant more than minor or meaningless<sup>17</sup> concessions has demonstrated that it did not approach that the bargaining table with an open mind—that its conduct has not been that of one seeking agreement. But "open mind" need not mean a mind

<sup>16</sup> Such was the purpose of the section. See House Report No. 245 on H. R. 3020, p. 19 and 20, submitted April 11, 1947, by Chairman Hartley, Committee on Education and Labor.

<sup>17</sup> E. g. offering to excuse employees, all female, for jury duty, it being true that women are not eligible to serve upon Texas juries.

without conviction nor need it mean a mind easily swayed by argument.

Instances developed through the testimony of Stafford which, I take it, are asserted to be invocations of respondent's "prerogative," negating the collective bargaining principle. During negotiations, Stafford learned that respondent contemplated changing lunch hour schedules and inquired of respondent's counsel concerning this matter. Stafford was told that such a change was indeed in the making but that it would be fruitless to discuss it as the employees would have no uniform conviction in that respect and that respondent had a right to schedule lunch hours to conform to its concept of what would best suit its interests. Again Stafford was unsuccessful in getting defined information concerning tests corrected by respondent in qualifying employees for promotion. Stafford's protests that these were matters of bargaining or legitimate inquiry as a basis for grievances were waived aside.

To state that in bargaining neither party is required to recede from a position taken or to bargain away freedom of action in respect to bargainable matters is not to say that with respect to such matters either may remove them from the area of bargaining. The theory of bargaining is that in the give and take of negotiations, convictions and positions once firmly held may by force of argument or by seemingly advantageous "swap" be the subject of compromise. Did such conditions obtain in the negotiations between respondent and the Union? The record makes it patent that they did not. On and after January 10, 1949, the Union was met continuously and consistently with the inflexible position of respondent as to the "prerogative clause." Of course the clause was discussed, indeed its force pervaded each meeting. It needs no argument to establish that such matters as the clause embraced are bargainable. The Act so provides. Respondent's position that it would sign no contract without a "prerogative clause" of its own drafting, is consistent with a determination not to reach agreement with the Union on such a vital matter.

I am persuaded to the conclusion that respondent never sincerely intended to bargain with the Union but on the contrary was determined at the outset of negotiations to agree to nothing that would serve in any respect to enhance the Union's prestige or make it appear to the employees as an effective bargaining agency.

175 During the preelection campaign the Union told the employees with unreasonable optimism it later appeared, that among the benefits to be secured by means of organization was increased earnings. According to Union propaganda, the lowest employee in an organized office was paid \$1 an hour.

Respondent opposed the selection of a bargaining agent and told the employees that their best interest would not be served by such a choice.

During the fall of 1948, respondent told its employees, "you will have to pay a substantial initiation fee and current dues in order to become and remain a member of the union, and before digging down into your pocket to pay the initiation fee and obligating yourself to continue to pay dues, you should carefully analyze the situation to determine, in your own mind whether the union really offers you something of substantial value for your money, because otherwise, you will simply be throwing your money away."

"This Company sincerely believes that the union does Not offer you and will Not afford you any real advantage of value."

Respondent was a good prophet. The Union has not afforded the employees "any real advantage of value." Respondent had and seized the opportunity to arrange subsequent events in order to substantiate its prophecy. By going through the sham of frequent meetings, by entering into protracted discussions of the Union's proposals, respondent sought to give the appearance of bargaining but this was mere pretense. Respondent's position was predetermined and inflexible. Respondent was  
176 determined to discredit the Union in the eyes of its members. To have the Union after months of negotiations come out of the conferences empty handed was an effective method of accomplishing such a result.

I find that respondent entered into its meetings with the Union determined not to reach agreement on any matter on terms which the Union could hold forth to the employees as an accomplishment, that by this conduct respondent expected to discredit the Union as a bargaining agent and to discourage others from "digging down" into their pockets to join an organization which, demonstrably, had been unable to gain for employees "any real advantage of value."

I find that from and after November 30, 1948, respondent refused to bargain in good faith with the Union in matters of wages, hours of employment, and other conditions of employment and has thereby violated and is violating Section 8 (a) (1) and (5) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of respondent set forth in Section III above, occurring in connection with the operations of respondent described in Section I hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and such

of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

177

## V. THE REMEDY

Having found that respondent has engaged in and is engaging in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies and purposes of the Act.

Having found that since November 30, 1948, respondent has failed to bargain in good faith with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that upon request respondent bargain collectively with the Union.

Having found that respondent has engaged in interrogation of employees concerning the Union, and has interfered with, restrained, and coerced them in derogation of their rights secured by Section 7 of the Act, it will be recommended that it cease and desist therefrom.

By conduct found to constitute interference, restraint, and coercion and by its studied refusal to bargain with the majority representative of its employees, respondent has demonstrated a determination not to accord to employees, rights which the Act was designed to protect. It is reasonably to be assumed that further unfair labor practices of the same or different character may be expected to occur unless respondent is ordered to refrain from in any manner transgressing employees' statutory rights. I will recommend, therefore, that respondent be ordered to cease and desist from interfering with, restraining, or coercing its employees in any manner, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to join, or assist the Union, to bargain collectively through representatives of

178 their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, as guaranteed in Section 7 of the Act.

As the evidence does not establish that Emma Moore was discriminatorily discharged, I will recommend the dismissal of that allegation.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. Office Employees International Union, A. F. L., Local No. 27, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees at respondent's Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Office Employees International Union, A. F. L., Local No. 27, was on August 19, 1948, and at all times since has been, the exclusive representative of all the employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain with Office Employees International Union, A. F. L., Local No. 27, on November 30, 1948, and thereafter as the exclusive representative of employees in the appropriate unit, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act.

5. By interrogating employees concerning Office Employees International Union, A. F. L., Local No. 27, and by threats and promises in connection with their relation to that organization, respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby violated Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

7. Respondent did not violate Section 8 (a) (1) or (3) of the Act by discharging Emma Moore.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that American National Insurance Company, Galveston, Texas, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all employees in its Galveston, Texas, office excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads, and all other supervisors as defined in the Act.

(b) Interrogating employees concerning their union membership, activities, or sympathies, or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the

right to self-organization, to form, join, or assist labor organizations, to join or assist Office Employees International Union, A. F. L., Local No. 27, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request bargain collectively with Office Employees International Union, A. F. L., Local No. 27, as the exclusive representative of all employees in the unit herein found to be appropriate, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

(b) Post at its office in Galveston, Texas, copies of the notice attached hereto marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Sixteenth Region shall, after being signed by respondent's representative, be posted by respondent, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous place, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by respondent to insure that such notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for the Sixteenth Region (Fort Worth, Texas), in writing within twenty (20) days from the date of receipt of this Intermediate Report, what steps respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report, respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

It is further recommended that the allegation in the complaint that Emma Moore was discriminatorily discharged be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with

the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed, shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 11 day of October 1949.

Wallace E. Royster,

(WALLACE E. ROYSTER).

*Trial Examiner.*

183

### *Appendix "A"*

#### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not interrogate our employees in any manner as to their union activities or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist Office Employees International Union, A. F. L., Local No. 27, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor or-

ganization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain members of this union, or any other labor organization.

We Will Bargain collectively upon request in good faith with the above-named union as the exclusive representative of all employees in the bargaining unit which is:

All employees at the Galveston, Texas, office, excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, department heads, and all other supervisors as defined in the National Labor Relations Act.

AMERICAN NATIONAL INSURANCE COMPANY,

(Employer),

By \_\_\_\_\_  
(Representative), (Title).

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date thereof, and must not be altered, defaced, or covered by any other material.

(Affidavit and Return Receipts Omitted.)

In the United States Court of Appeals for the Fifth Circuit

[Title omitted.]

*Certificate of the National Labor Relations Board*

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, amended (re-designated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings had before said Board, entitled, "In the Matter of American National Insurance Company Employer and Office Employees International Union, Local 27, AFL Petitioner," and "In the Matter of American National Insurance Company and Office Employees International Union, A. F. L., Local No. 27," the same being known as Cases Nos. 16-RC-142 and 39-CA-33, respectively, before said Board, such transcript including the pleadings, and testimony and evidence upon which the order of the Board was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

Case No. 16-RC-143

(1) Stenographic transcript of testimony taken before hearing officer, Elmer Davis, on June 25, 1948, together with all exhibits introduced in evidence.

(2) Copy of Decision and Direction of Election issued by the National Labor Relations Board on July 30, 1948.

(3) Order amending Direction of Election, issued by the National Labor Relations Board on August 10, 1948.

(4) Tally of Ballots, issued by the Regional Director on August 19, 1948.

(5) Certifications on conduct of election held August 19, 1948.

(6) Certificate of no objections filed, issued by the Regional Director on August 27, 1948.

186 (7) Copy of Certification of Representatives issued by the National Labor Relations Board on September 2, 1948.

Case No. 39-CA-33

(8) Order designating Wallace E. Royster, Trial Examiner, for the National Labor Relations Board, dated July 26, 1949.

(9) Company's (Petitioner) request for extension of time for filing proposed findings and conclusions and brief in support of same.

(10) Stenographic transcript of testimony taken before Trial Examiner Royster on July 26, 27, 28, 29, August 4, 2, and 3, 1949, together with all exhibits introduced in evidence; also all rejected exhibits.

(11) Copy of Acting Chief Trial Examiner's telegram, dated August 12, 1949, requesting extension of time to file briefs.

(12) Company's proposed findings and conclusions, received September 1, 1949.

(13) Trial Examiner Royster's Intermediate Report, dated October 11, 1949 (annexed to item 22 hereof); order transferring case to the Board, dated October 11, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(14) Company's request for extension of time for filing exceptions and brief, dated October 17, 1949.

187 (15) Company's request for permission to argue orally before the Board, dated October 17, 1949. (Denied in Board's Decision and Order of April 5, 1950.)

(16) Copies of Board's telegrams, dated October 24, 1949, granting extension of time for filing exceptions and briefs.

(17) Company's exceptions to the Intermediate Report, dated November 11, 1949.

(18) General Counsel's exceptions to the Intermediate Report, received November 14, 1949.

(19) Union's exceptions to the Intermediate Report, received November 14, 1949.

(20) Union's letter, dated February 10, 1950, requesting the Board to enter its usual order against Company, although a collective bargaining agreement had been executed by the Company and Union.

(21) Company's motion that the Board make no findings and enter no orders with respect to the 8 (a) (5) phases of the case, in view of the fact that a collective bargaining agreement had been executed by Company and the Union, and request for oral argument in support of its position. (Motion denied in Board's Decision and Order of April 5, 1950, page 3.)

(22) Decision and Order issued by the National Labor Relations Board on April 5, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

188 In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as foresaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 26 day of May, 1950.

(S) Frank M. Kleiler,

(FRANK M. KLEILER),

*Executive Secretary,*

*National Labor Relations Board.*

[SEAL]



That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 30, 1951

No. 13198

AMERICAN NATIONAL INSURANCE COMPANY

*versus*

NATIONAL LABOR RELATIONS BOARD

On this day this cause was called, and after argument by Louis J. Dibrell, Esq., for Petitioner, and Louis Libbin, Esq., Attorney, National Labor Relations Board, for respondent, was submitted to the Court.

OPINION OF THE COURT—Filed February 23, 1951

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 13,198

AMERICAN NATIONAL INSURANCE COMPANY, PETITIONER

*versus*

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for Review of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(February 23, 1951)

Before HUTCHESON, *Chief Judge*, and McCORD and BORAH, *Circuit Judges*

HUTCHESON, *Chief Judge*:

Proceeded against by the board, found guilty of violations<sup>1</sup> of the National Labor Relations Act, as amended, and ordered: (1) to cease and desist from (a) refusing to bargain with the union by in effect insisting on the prerogative clause; and (b) from illegal interferences with its employees; and (2) upon request to bargain collectively with the union; respondent below has brought the mat-

<sup>1</sup> Specifically (a) of refusing to bargain collectively by insisting upon the so-called prerogative clause of the contract; and (b) of interfering with its employees in their right of self-organization by discouraging membership in a union, and bargaining collectively through a representative of their own choosing.

ter to this court by petition for review, in which it seeks not to set aside the order as a whole but to modify or set it aside in part to the extent that its enforcement would outlaw, or prevent petitioner from stipulating for, the prerogative clause of the contract.

Alleging: that, on the 13th of January, 1950, after the examiner had filed his report on October 1, 1949, and before the board had, on April 5, 1950, filed its report, petitioner and the union, after completion of their bargaining negotiations, had entered into a written contract which is, and will, until July, 1951, be, in force; that in insisting upon the so-called prerogative clause with its provision against arbitration, it has not been guilty of unfair labor practices; that the net effect of the board's order is to deprive it, without due process of law, of rights guaranteed to it by law, including the right to refuse to agree to arbitration, by in effect requiring it, in any further contract negotiations, to abandon its prerogative clause and to agree to arbitration; petitioner prayed for such relief as the court might find it entitled to.

The board, in addition to answering, sought enforcement of its order, and the case is here for our appropriate action.

Neither in its petition nor in its brief does petitioner assail, or ask relief from, paragraph 1(b) of the board's order. Its whole complaint is directed, its whole effort at relief is confined, to setting aside, as unfounded in law, paragraph 1(a) of the order and the board's finding and conclusion that petitioner had, and has, no right to insist upon the prerogative clause<sup>2</sup> of the contract, on the

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<sup>2</sup> "Functions and Prerogative of Management. Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

"The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union, in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration."

ground that on the record viewed as a whole the board's finding and conclusion on which this order rests is not supported by substantial evidence, and is not a lawful order, and that it may not be enforced but must be set aside and vacated.

It insists; that the purpose and effect of this paragraph of the board's order is to discredit and cast doubt upon the contract petitioner now has with the union; and that, if this court orders its enforcement, the net and inescapable effect will be to prevent petitioner from seeking in the renewal of its contract with the union to retain the same, or similar provisions as to company prerogatives and arbitration as that on which the union and the company have already agreed.

It urges upon us, therefore: that the examiner was right in concluding that petitioner had a right to insist upon the inclusion of the clause in the contract;<sup>3</sup> that the board was wrong in its contrary conclusion that the respondent, by insisting on the so-called prerogative clause as a condition of agreement; failed to perform its statutory obligation to bargain; and that the enforcement of this paragraph I(a) should be denied as unfounded in law and in fact.

<sup>3</sup> "There is no doubt that respondent here had a right to insist upon the inclusion of the 'prerogative clause' in any contract. I find, contrary to the contention of the General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment more favorable than those then existing. Assuming, but of course not deciding, that respondent's employees were ill-paid and that respondent could well afford to grant a wage increase it was under no legal compulsion to do so. True, the Act recognizes (Section 1) that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce but in ameliorating this condition the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table.

It is argued further, however, that the intransigence of respondent is, in itself, evidence of bad faith—that respondent by its refusal to grant more than minor or meaningless concessions had demonstrated that it did not approach the bargaining table with an open mind—that its conduct has not been that of one seeking agreement. But 'open mind' need not mean a mind without conviction nor need it mean a mind easily swayed by argument."

We agree with the petitioner: that the provisions of the contract assailed by the board are not illegal or in anywise forbidden or prohibited; that petitioner had a right to urge and insist upon them; and that the evidence, viewed as a whole, does not, except as manifested by the unilateral action of petitioner during the time when negotiations were going on, in making changes and raising wages without consulting or notifying the union, show any refusal of the petitioner to engage in collective bargaining, as that term is defined in the act and in the decisions of the courts.

Because, however, of these unilateral acts, done while the bargaining was going on, and not because of any support in the evidence for the view that the employer, in insisting on the inclusion of the prerogative clause, was any less in good faith than the union was in resisting its inclusion,<sup>4</sup> the affirmative clause 2(a) requiring the employer to bargain will be enforced.

While, as the event showed, the union and the petitioner were able to at last agree on a prerogative clause in somewhat modified terms, the union continued throughout to be as vigorously opposed to any clause of that kind as the employer was in favor of it. It was not, therefore, as the board finds, the steadfastness of the employer alone, in insisting on his point. It was the steadfastness of employer and union,<sup>5</sup> the one in proposing, the other in opposing, a clause of this kind, which the employer felt it ought, and the union felt it ought not, to have, which prolonged the negotiations. It was not any general unwillingness on the part of the petitioner to negotiate a contract satisfactory to itself as well as the union.

Before the enactment of the National Labor Relations Act, as amended, there was, despite the decisions of the courts to the contrary,<sup>6</sup> some understandable confusion as to what "collective bar-

<sup>4</sup> Though the witness Stafford did testify that the prerogative clause the employer wanted came as a complete surprise to the union and that if inserted it would take all of the union's rights away, and that in the face of the company's insistence that they must have such a clause, they made repeated efforts to by-pass it, he does testify positively (p. 48 appendix to respondent's brief):

"He (Mr. Dibrell) wanted to know if I thought he was bargaining in good faith. I couldn't say he hadn't bargained in good faith—we had just started, *that we never could agree to the prerogative clause even if he gave us five hundred dollars a month increase in there.* \* \* \*"

<sup>5</sup> *NLRB v. Whittier Mills*, 123 F. (2) 725; *NLRB v. Athens*, 161 F. (2) 8; *NLRB v. Algoma*, 121 F. (2) 603; *Farmers Grain v. Toledo*, 158 F. (2) 109; *NLRB v. Corsicana*, 178 F. (2) 344.

<sup>6</sup> *Terminal Ry. v. Brotherhood*, 318 U.S. at p. 6; *NLRB v. Bell*, 91 F. (2) 509; *NLRB v. Lorillard*, 117 F. (2) 921.

gaining" required of employers. This was due to the persistence of the board in asserting and pressing its view that the use in the National Labor Relations Act of the words "collective bargaining" meant that the employer had to agree to terms proposed by the union, if in the opinion of the board these terms were reasonable, and that a failure to agree to such terms was a basis for a finding that the employer was not bargaining in good faith. Since, however, that term has been defined in the National Labor Relations Act, as amended, 29 USCA, Sec. 158(d),<sup>7</sup> there is no longer any basis for differences of opinion as to what it means or for board orders in effect requiring the employer to contract in a certain way.

Of the opinion that in the quotation from the examiner's report, set out in note 3 above, the law is correctly stated, and that, in insisting on the prerogative clause, the company was not guilty of refusing to bargain, we order enforcement as to Paragraphs 1(b) and 2(a) and deny it as to Paragraph 1(a).

#### JUDGMENT

Extract from the Minutes of February 23, 1951

No. 43198

AMERICAN NATIONAL INSURANCE COMPANY

*versus*

NATIONAL LABOR RELATIONS BOARD

This cause came on to be heard on the petition of American National Insurance Company for a review of an order of the National Labor Relations Board, made on April 5, 1950, "In the Matter of American National Insurance Company and Office Employees International Union, AFL, Local No. 27", and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board in this cause be, and the same is hereby, ordered enforced as to Paragraphs 1 (b) and 2 (a) and denied as to Paragraph 1 (a).

<sup>7</sup> "(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession; \* \* \*".

PETITION FOR REHEARING—Filed March 22, 1951

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 13198

AMERICAN NATIONAL INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
REHEARING

Comes now the National Labor Relations Board and respectfully petitions this Court for a rehearing in this case. In support of its petition the Board respectfully shows the Court as follows:

On February 23, 1951, this Court handed down its opinion in this case, in which it decided that the American National Insurance Company "had a right to urge and insist" upon the inclusion of its restrictive management prerogative clause as a condition precedent to the execution of any collective bargaining agreement.

The Board's decision and order was based on the finding that the company's prerogative clause included matters which are recognized as part of the subject matter of compulsory collective bargaining under the Act. Since the company's clause provided that all these matters were to be left to the exclusive unilateral determination of the Company, the Board found that the incorporation of such a clause in any contract was in derogation of the Union's bargaining rights under the Act. Although it is recognized that the Union could have voluntarily agreed to surrender its right to bargain on these matters, the Board concluded that the company's conditioning of any contract at all on the Union's surrender of its statutory right to bargain about these particular subjects constituted bad faith bargaining, and also that it constituted, quite apart from the element of bad faith, a *per se* violation of Section 8 (a) (1) and (5) of the Act.

This Court appears to have regarded the company's clause itself as if it were an ordinary subject of collective bargaining such as wages, hours, and other conditions of employment. Accordingly,

\* As found by the Board (R. 149) the company's prerogative clause included the "exclusive right to determine unilaterally such terms and conditions of employment as working rules, work schedules, the establishment of extra shifts, lay-off policy, lunch periods, the granting of leave of absence, and distribution of overtime."

the Court concluded that it was just as fair and reasonable, under the Act, for the company to insist upon including the clause in any contract as it was for the Union to refuse to do so. In effect, the Court considered that the parties reached a legitimate impasse on the issue.<sup>9</sup> Although we have already argued to the Court our contention to the contrary, we believe that the Court may wish to reconsider its decision in this respect, in view of the decision of the Supreme Court in the case of *Electric Ry. Employees v. Wisconsin, ERB*, — U.S. —, 71 S. Ct. 359, 368, 373, 27 LRRM 2385, which we believe tends to support the Board's position herein.<sup>9</sup>

In its decision in the *Wisconsin* case the Supreme Court relied in part on the Board's decision in the instant case to demonstrate that a Wisconsin compulsory arbitration statute conflicted with the Federal Act because the state statute permitted the arbitrator to rule that certain appropriate subjects of compulsory bargaining, which are identical to those involved herein, were to be left to the unilateral determination of management. In this respect the Court stated at 27 LRRM 2385, 2391:

Further, the transit company was able to avoid entirely any determination of certain union demands when the arbitrator, in accordance with Wis. Stat. 1947, s-111.58 ruled that the matter of assigning of workers to certain shifts 'infringe(s) upon the right of the employer to manage his business.' Yet similar problems of work scheduling and shift assignment have been held to be appropriate subjects for collective bargaining under the Federal Act as administered by the National Labor Relations Board. See *Woodside Cotton Mills Co.*, 21 NLRB 42, 54-58 (1940); *American National Ins. Company*, 89 NLRB No. 19 (1950) and cases cited therein.<sup>10</sup>

We believe that in relying on these Board cases the Supreme Court apparently agreed with the Board's position that the right to include given subjects within the sphere of the prerogatives of management necessarily excludes them from the area of collective bargaining as contemplated by the Act. If this Court was correct in holding that the Company could lawfully insist on reserving unto itself the right to unilateral action on such subjects as work scheduling and assignments, then the Wisconsin statute, contrary to the Supreme Court's

<sup>9</sup> The considerations underlying the Board's position are further discussed in a recent article by one of the writers of this petition and of the Board's brief. Findling and Colby, *Regulation of Collective Bargaining By The National Labor Relations Board—Another View*, 51 Col. L. Rev. 170 (Feb. 1951).

<sup>10</sup> The dissent in this case also cites the instant case as requiring collective bargaining under the Act, 27 LRRM 2385, 2395.

holding, would not be in conflict with the Federal Act on this point for in either case the employer could "avoid entirely any determination of certain union demands" by simply insisting that the given subjects are within its right to manage its business. Since the final result in both cases would be identical, the Wisconsin statute would not be placing any greater latitude of freedom in the hands of the employer than already existed under the Federal Act. Accordingly, the conflict in this regard which the Supreme Court saw between the Federal and Wisconsin statute would cease to exist.

It should also be noted that, just as in the instant case, the Wisconsin statute did not place the right of unilateral action in the hands of the employer until the same kind of impasse in collective bargaining relied on by this Court had occurred between the parties. Yet, the Supreme Court still considered the reservation of unilateral action in the employer at this stage of the negotiations as contrary to the collective bargaining requirements of the Federal Act.

Quite apart from the Supreme Court's decision, we believe that the Court's decision in the instant case permits the employer to achieve indirectly what the Court has recognized that it could not do directly. Thus, this Court found that the company violated Section 8 (a) (5) and (1) of the Act by "making changes and raising wages without consulting or notifying the union." Yet, by simply attending negotiation meetings and demanding the same freedom to take unilateral action, the company, under this decision, was able to guarantee the complete exclusion of Union participation in the formulation of these determinations. We respectfully submit that this result places a premium on form where there is no change in substance. In either case, the employer is refusing to permit the Union's voice to be heard as to working conditions by taking the position that he shall be free to fix them unilaterally. The statute forbids the employer, however, from insisting upon this position.

For the foregoing reasons, the Board respectfully requests that this petition for rehearing be granted, and that the case either be set down for reargument or that the Board's order be enforced in full.

GEORGE J. BOTT,

*General Counsel,*

DAVID P. FINDLING,

*Associate General Counsel,*

A. NORMAN SOMERS,

*Assistant General Counsel,*

MARCELLE MALLET-PREVOST,

WILLIS S. RYZA,

*Attorneys,*

*National Labor Relations Board.*

MARCH 1951

## Certificate of Counsel

Comes now A. Norman Somers, Assistant General Counsel of the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing petition, and that said petition is filed in good faith and not for purposes of delay.

(S.) A. NORMAN SOMERS,  
Assistant General Counsel,  
National Labor Relations Board.

Dated this 14th day of March 1951.

## ORDER DENYING REHEARING

Extract from the Minutes of April 2, 1951

No. 13198

AMERICAN NATIONAL INSURANCE COMPANY  
*versus*

NATIONAL LABOR RELATIONS BOARD

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

## CLERK'S CERTIFICATE

UNITED STATES OF AMERICA

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 189 to 203 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit in a certain cause in said Court, numbered 13198 wherein American National Insurance Company is petitioner, and National Labor Relations Board, is respondent, as full true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 188 are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 28th day of May, A.D. 1951.

(S.) OAKLEY F. DODD,  
Clerk of the United States Court of Appeals,  
Fifth Circuit.

120

Supreme Court of the United States

No. 126, October Term, 1951

[Title omitted.]

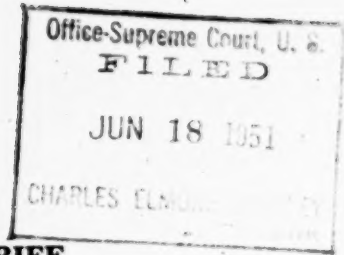
*Order allowing certiorari*

Filed October 8, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 126



**APPENDIX TO PETITIONER'S BRIEF**

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**UNITED STATES  
COURT OF APPEALS  
FIFTH CIRCUIT.**

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**No. 13,198**

**AMERICAN NATIONAL INSURANCE COMPANY,  
Petitioner,**

**versus**

**NATIONAL LABOR RELATIONS BOARD,  
Respondent.**

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**ON PETITION FOR REVIEW OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD.**

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**U. S.**

**COURT OF APPEALS**

**FILED**

**JAN 2 1951**

*Gatley F. Dodd*  
**CLERK**

## INDEX

	PAGE
Pages 254-265 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	1
Pages 329-330 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	11
Pages 365-366 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	13
Pages 369-376 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	15
Pages 397-403 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	23
Pages 454-455 of the Stenograph Transcript of the Testimony taken before the Trial Examiner	29
Pages 846-855 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	31
Pages 859-862 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	39
Pages 872-874 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	43
Pages 876-878 of the Stenographic Transcript of the Testimony taken before the Trial Examiner	45
General Counsel's Exhibit 8, being the original con- tract proposed by the Union .....	48
General Counsel's Exhibit 9, being the addendum to same .....	60
General Counsel's Exhibit 10, being Respondent's letter of January 17, 1949, addressed to the Union .....	64

## II

### INDEX—(Continued)

	PAGE
General Counsel's Exhibit 11, being Respondent's letter of January 19, 1949, addressed to the Union .....	80
General Counsel's Exhibit 12, being Respondent's letter of February 7, 1949, addressed to the Union .....	81
General Counsel's Exhibit 13, being the Union's letter of February 7, 1949, addressed to Respondent .....	82
General Counsel's Exhibit 14, being Respondent's letter of February 17, 1949, addressed to the Union .....	83
General Counsel's Exhibit 15, being the Union's letter of February 19, 1949, addressed to Respondent .....	84
General Counsel's Exhibit 16, being the Union's letter of January 19, 1949, addressed to Respondent .....	85
General Counsel's Exhibit 19, being Respondent's letter of July 8, 1949, addressed to Messrs. Mullinax, Wells & Ball .....	86
General Counsel's Exhibit 20, being the Respondent's letter of March 3, 1949, to the Union .....	88
General Counsel's Exhibit 23, being the Union's letter of March 7, 1949, addressed to Respondent .....	94
General Counsel's Exhibit 24, being Respondent's letter of April 1, 1949, addressed to the Union .....	95

### III

#### INDEX—Continued

	PAGE
General Counsel's Exhibit 26, being Messrs. Mullinax, Wells & Ball's letter of June 22, 1949, to Respondent .....	96
General Counsel's Exhibit 27, being Messrs. Mullinax, Wells & Ball's letter of June 13, 1949, addressed to Respondent .....	97
General Counsel's Exhibit 28, being Messrs. Mullinax, Wells & Ball's letter of June 1, 1949, addressed to Respondent .....	98
General Counsel's Exhibit 29, being Respondent's letter of June 14, 1949, addressed to Messrs. Mullinax, Wells & Ball .....	100
General Counsel's Exhibit 32, being the Union's letter of February 26, 1949, addressed to Respondent .....	101
General Counsel's Exhibit 33, being the Union's letter of May 12, 1949, addressed to Respondent .....	105
General Counsel's Exhibit 34, being the Union's second complete written contract proposal, which is the so-called "Ball" contract .....	106



UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

No. 13,198.

AMERICAN NATIONAL INSURANCE COMPANY,

Petitioner,

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PAGES 254-265 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Mr. Wilson:

Object to the hypothetical question.

Trial Examiner Royster:

Sustained.

By Mr. Dibrell:

Q. Isn't it a fact, Ames, that it was agreed between everybody there that if we could get together on a satisfactory wage increase, we had a contract?

A. We were still discussing II-A. No agreement had been made. I think the record you refer to will show that, that no agreement had been made as to that. We were leaning over backwards to get sick leave proposals, wage increase was of prime importance to those people and we were doing our dead level best to get a contract with you. I won't say if we had gotten that wage increase we would have had a contract because we still had a major difference on your prerogative of interpreting that contract, especially regarding the individual rights.

Q. But by that time, in your proposal you had incorporated our II-A.

A. Subject to arbitration.

Q. Yes, with minor changes, it was agreed on—

A. Yes.

Mr. Wilson:

Object to the form of the question and move that any answer be stricken.

Trial Examiner Royster:

Over-rule the objection. And the answer may remain.

By Mr. Dibrell:

Q. In fact, our main difference in respect to II-A in those Ball meetings was not so much what was in II-A but, the arbitration?

Mr. Wilson:

Object to the form of the question as to what is the main difference, et cetera. Let's find out what happened instead of having this witness characterized.

Trial Examiner Royster:

Overruled. You may answer. ✓

By Mr. Dibrell:

Q. Do you remember the question?

A. No.

Mr. Dibrell:

Would you read the question please?

(Record read)

A. We had other differences, Mr. Dibrell.

By Mr. Dibrell:

Q. But the arbitration was what you wanted and what we weren't agreeing to?

A. Definitely.

Q. That was the main difference, wasn't it?

A. You said the company would never agree to arbitration; the law didn't require it and you wouldn't agree to it. That was the company's position.

Q. Isn't it a fact, Amos, that in the open meeting on that day, which I will place with certainty, I think on the 20th day of May, isn't it a fact that you at least thought you saw a way around II-A?

Mr. Wilson:

Object to the form of the question.

Trial Examiner Royster:

I sustain the objection as to what he thought.

By Mr. Dibrell:

Q. Wasn't there a great deal of discussion at that meeting as to how II-A could be arranged or reworded in order to be acceptable to the Union if the wage increase could be agreed on?

A. We didn't discuss wage increase. We were talking about II-A. Now, I don't know where the wage increase came in in the discussion of II-A except you and Ball, in your side talks, had certain conversations about wage increase. All the way through, from the first meeting in January through and including Monday's meeting, I have said with minor modifications, amendments, additions to the II-A prerogative that we ought to set down in black and white certain rules governing promotion, demotions, discipline, and so forth, that we might agree to that, and I have suggested it innumerable times to you—let's do

that—but your position from the beginning to the end—that was it, you can take it or you don't get a contract.

Q. From the beginning and now, isn't the difference between us on II-A, the question of whether or not the decision of the management shall be further reviewable by outside arbitration?

A. The difference between the company, myself and the Union is whether or not under the Taft-Hartley Act we are entitled to negotiate and bargain collectively with you regarding hours of work, rates of pay, and working conditions. That is the difference. You have one definition of the Act and I have another.

Q. There has been, as you say, as I understand you to say, a difference of opinion as between you and your committee on one side and me and my committee on the other side as to what the bargaining parties, the negotiating parties are required to do in order to meet the test of good faith bargaining, is that correct?

A. That is correct.

Q. Have I not asked you in these meetings repeatedly, repeatedly and repeatedly whether or not it was your conception that in order to meet the test of good faith in collective bargaining, the company had to grant you an increase in wages?

A. My answer to you then and my answer to you now is I don't know, I am not an attorney; and I can't interpret the law. I have my ideas and evidently you have yours, and they conflict.

Q. Haven't I also asked you that same question, Amos, in respect to whether or not it was your opinion that to meet the legal requirements of good faith collective bargaining, does the company have to agree to outside arbitration of matters covered by II-A?

A. You have asked that, yes.

Q. Numerous and repeated times?

A. Yes.

Q. And what has been your answer to that?

A. I don't know.

Q. You have said in your direct examination, Amos, I said if you were a lawyer that you would understand what I was talking about. Wasn't it in connection with that kind of discussion between us that I talked about the lawyer having a concept of this thing and apparently you didn't have—wasn't that where it was?

A. I would say yes, because you were asking me to interpret the law. I told you then I am not an attorney; I am a layman. Your definition of collective bargaining is one thing and mine is another thing. I will grant you maybe you had to give a concession, but you had to bargain with the Union in regard to rates of pay, hours of work, and other conditions. I have told you that numerous times, I have begged, pled with you, done everything in the world to get you to negotiate a contract with me covering the working conditions of those people, rates of pay, hours of work. The company's position is: they will do only what the law requires. We gave you the law. On Selective Service: these women are not going into the armed services by draft. Hours of work: you are perfectly willing to pay overtime for over forty hours a week with time and a half; that is required by law.

Q. You have made the statement, Amos, in your direct examination and now that I have continually stated that the company would only do that which is required by law to do. Isn't it a fact that the company's statement of position that it would do what it was required to do by law started out in the beginning as clearly stated in this letter of January 17th, and has always been simply as to overtime and as to military service?

A. No sir.

Q. Well, what other things have we told you?

A. Every single solitary section of that contract was you would do what you were required by law; you were not required to grant any concessions, not to required to recede from the position you took. I could agree to it or else. I told you I wouldn't or else. I would not bring your people out on strike. We were going to get a contract from you because we were going to stay with it until we finally got some collective bargaining and a contract.

Q. Isn't it true that what I have said to you is that it was not my understanding that we were by law required to recede from our position?

A. It was not your understanding that you were required by law to recede from your position.

Q. For instance, on wages, on outside arbitration, for instance on number of paid holidays, for instance on sick leave, we took with you, a position that we would pay you a certain wage, that we would grant you so many days of sick leave, grant you so much holidays. That was not satisfactory to you. Now you have been attempting to get us to better our offer, so to speak, to you. Haven't you?

A. Certainly.

Q. By every way that you could, persuasion, everything you could do across the bargaining table, you have done, is that correct?

A. I have tried to get a contract to the best of my ability.

Q. Now, the fact is that we have not bettered our offer of wages, that we have not increased our offer of sick leave, we have increased vacations, we have done one or two things like that, but hasn't the argument between us been whether or not we were required by law, in order to meet the test of good faith collective bargaining, to

recede from these positions principally on wages and outside arbitration and disputes?

A. You have told me repeatedly that you did not have to recede on any position, by law, and if I could convince you beyond a doubt that you did, then you would.

Q. That is true, I told you I would recede like that?

A. That's right, and this was your position and you would not recede from it. I could take it or I could leave it.

Q. The point I am trying to get, and I don't want to lead you too much; when you say I said I would only do that required by law, that is the kind of discussion you are talking about isn't it?

A. That's right.

Q. I didn't tell you that the law, as such, I am not talking about the law of collective bargaining, but the general law like the Wage and Hour Law and the Soldiers and Sailors Relief Act; I have never told you there were any laws governing us except those two things, have I?

A. You have mentioned those two laws and you brought out to me under the law you did not have to recede from any position and you would only do what the law required. This was your position; you didn't have to recede from it. I could take it or leave it, and that was your position—period.

Q. When did I tell you I would not negotiate?

A. You never did use those words, my friend.

Q. That is your construction you placed on what I said or what I did?

A. You said, "You can take it or else."

Q. When did I ever say, "You can take it or else," those precise words?

A. We had been negotiating since November 30th, finished up Monday morning and on Monday morning after 10:00 o'clock and before 12:00 o'clock, I asked you point blank if the company would recede from its position

as given us in the letter of January 17th, on wages. Your answer was no. I asked you that on those other provisions all the way down and your answer was no; and I told you then, "I am wasting your time; I am wasting my time; I just as well terminate this meeting and leave." I picked up my brief case and started putting in my papers and you said, "Wait a minute; don't leave like that." And you called a recess and left me under the impression that finally you were going to bargain. Now, I can't sit here and tell you when you said specific things. All I can do is sit here and tell you from my memory you refused to bargain, only granted what was required by law, and wanted me to convince you beyond a doubt you had to recede from a position; and I tell you now what I told you then: I am not a lawyer; I am not a Court; and I have never worked for the National Labor Relations Board. But your definition of collective bargaining and my definition of collective bargaining is not the same as given by Webster in the dictionary.

A. The question was did I ever tell you to take it or leave it.

A. Darned right you did.

Q. When.

A. I am not going to sit here and say when.

Trial Examiner Royster:

The question is when. If you can't remember when, say so.

The Witness:

I don't know.

By Mr. Dibrell:

Q. Isn't it a fact, Amos, that your statement, your testimony that I told you you could take it or leave it,

when you analyze it, is a construction you place, that is the net results when I told you no we wouldn't increase wages, that you could take it or leave it—but did I ever use the words?

A. When I tell you, do you want me to talk it over or is it strictly a take it or leave it basis, and you sit and agree it is a take it or leave it basis, what does that mean?

Trial Examiner Royster:

The question is: Do you recall him ever using that precise expression to you?

The Witness:

Yes, I think I can.

By Mr. Dibrell:

Q. Can you tell me when?

A. Some time between our negotiations between November 30 and May 30. It wasn't used the other day.

Q. Some twenty meetings?

A. Especially in connection with Article II-A.

Q. When was it you and Al Stafford—I mean Al Wilson filed this complaint before the Board? It is in the record.

A. January 28.

Q. You knew, did you not, in all of the meetings we had after January 28 that we knew you had filed this charge against us, didn't you?

A. Yes sir.

Q. You knew we knew it was pending?

A. Yes sir. In fact, I told you I was going to Fort Worth.

Q. As a matter of fact, it was no great surprise, as you say, you had told us before you were going up there, hadn't you?

A. Yes sir.

Q. That was early in the proceeding, early in January, wasn't it?

A. It was in January.

Q. You remember you testified we had three meetings, the tenth, eleventh, and twelfth, I think it was, of January?

A. Yes sir.

Q. Which was really the first meetings we had so far as actually getting down to spade work, so to speak, is concerned?

A. Yes sir.

Q. Didn't you testify that at the end of those meetings you said to us, in effect, "I don't know what to do. I want a recess. I am going to Fort Worth to find out."

A. I don't think I told you I was going to Fort Worth at that meeting. I didn't go until January 28. I told you I was going to have to get additional information on the definition of bargaining because you brought in the element the Company did not have to recede from any position, and we had to grant you II-A which took away the right to bargain with respect to hours of work, rates of pay, and so forth, and I couldn't agree with you. And I would consult with attorneys or maybe go to the Board to get a definition. Now, at the latter meeting in January, I told you specifically I was going to have to go to the Board because of the interpretations you got. You were not bargaining with me in good faith and you tried in that earlier meeting to make me admit to you that we were deadlocked. And I refused to do it. At the later meeting, I agreed with you we were deadlocked, because you refused to bargain with me.

Q. All of our meetings from early in January on, have been had with knowledge of both sides that this unfair labor practice, of refusing to bargain collectively and fairly was in the mill, so to speak, we have both known that, haven't we?

A. Early in January, no sir.

Q. The twelfth of January, we will say.

A. No sir.

Q. At least since January 28 or since then?

A. Yes sir.

Q. Isn't it a fact, Amos, that you have been attempting to bolster your charge that we were refusing to bargain fairly and that I have been attempting to keep myself in position to meet that charge every since?

A. Emphatically no.

Q. We had made some progress on the contract, hadn't we?

Mr. Wilson:

Object to the form of the question. It wouldn't mean a thing if you got an answer in here yes or no. What is some progress?

Mr. Dibrell:

I can't ask all the questions in one.

Trial Examiner Royster:

Let him answer it.

Mr. Dibrell:

Will you read the question please?

o. (Record read.)

PAGES 329-330 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Q. Now, the company, on the 18th day of January handed to you in open negotiation meeting, the letter which you refer to as the letter of January 17th, is that right?

A. That's right.

Q. So referred to because it bears that date?

A. That's right.

Q. Now, what proposal are you now at this time at this stage of the negotiations making to the company?

Mr. Wilson:

Object, if he means now, because if he is making any proposals now he had better get off the witness stand.

Mr. Dibrell:

That is not what I mean. I mean the last meeting we had which was Monday afternoon.

Trial Examiner Royster:

Does that meet your objection?

Mr. Wilson:

No objection at all if he made any proposal Monday or any other time.

By Mr. Dibrell:

Q. What constitutes your written proposal as of our last meeting, to the company, as of Monday afternoon of July 25th?

A. What constitutes our written proposal as of our last meeting, to the company, as of Monday afternoon July 25th?

Q. Yes sir.

A. The Ball contract of which you have a copy, our Step-Up Schedule, and the other agreements we have written now according to the vacation plan, and so forth, that is what you have before us. We are out on rates of pay, hours of work, holidays, sick leave. You know that as well as I do. Why should I—

Q. I don't care to be argumentative, but you know Mr. Stafford, we have to get in the record here—I don't know any other way to get it in the record except ask the questions and get the answer, and if I inadvertently ask you questions as to where you are now and at present, please understand I don't mean as a witness on the stand. I will ask you to consider all such questions as reverting to our last negotiation meeting which was on Monday the 25th. At that time, the proposal to which you were seeking the agreement of the company constituted the Ball contract which had been first submitted on May 20th, and the Step-Rate Wage Proposal, which had been first submitted on December 15, 1948, is that right?

A. December 15, 1948, that's correct.

Q. So that insofar as any proposals from the Union to the company is concerned, you did not and you have not receded from the wage demands which you originally made, is that or not correct?

A. I want to be careful of the statement. I want you to say that over again—I haven't receded—

Trial Examiner Royster:

Read the question.

(Question read)

PAGES 365-366 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Trial Examiner Royster:

Read the question.

(Record read)

Trial Examiner Royster:

Well, now he has explained what the Union's position was in that respect. I will let him answer it.

A. The Union never took the position that the Company had to raise wages.

By Mr. Dibrell:

Q. May I have an answer please, Amos.

Trial Examiner Royster:

Just a minute—the witness has testified, as he started out to do right now, that the Union has never taken a position that the Company had to raise wages in order to bargain in good faith. The question is: “Did that position remain the same or was it different at the July 25th meeting?”

Mr. Wilson:

He has said it never did. How could it be any different? He has said it was never any different.

Trial Examiner Royster:

The witness may want to change his testimony. Let's let him answer the question. Was it any-different at the July 25th meeting?

The Witness:

We still had the same position.

By Mr. Dibrell:

Q. Do you recall at the so-called Ball meetings of May 19 and 20 what Mr. Ball had to say on the question on whether or not the Company was bargaining in good faith?

A. He stated several times that he thought the Company was bargaining in good faith.

Q. He did so state and it is on those records, is it not?

A. Yes sir.

Q. And he was at that time the chairman of your committee?

A. That was early in the meetings, my friend, when you asked the question point blank.

Q. But the point, Mr. Stafford, is that when he said it and at what stage of the meetings he said it, reflects from these transcriptions that were made of those meetings, was it not?

Mr. Wilson:

Object on the grounds that this witness has not testified that he ever heard a transcription that was made, so how can he tell whether or not the transcriptions would reflect anything?

Mr. Dibrell:

I will back up a bit.

By Mr. Dibrell:

Q. The machine was set up in the middle of the table, was it not?

A. Yes sir.

Q. It was running, was it not?

A. Yes sir.

Q. The microphone, which was a tall microphone with a ball on top, was sitting in the middle of the table, was it not?

A. Yes sir.

PAGES 369-376 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Q. There is, of course, no question but you do now have in your possession, by delivery from Mr. Ball, the information sent to him in our letter of July 8?

A. I have the financial statement and the copy of the payroll.

Q. Is it not true, Mr. Stafford, the reason Mr. Ball does not further represent you is because he would not agree with you in your contention that the Company's bargaining committee was refusing to bargain fairly?

Mr. Wilson:

Object on the grounds it is entirely immaterial.

Trial Examiner Royster:

I will sustain the objection.

The Witness:

I would like to answer that question.

By Mr. Dibrell:

Q. You have stated repeatedly in your testimony on the stand that you can not agree to the so-called paragraph II-A of the letter of January 17 or as, in other words, we stated the Company's prerogative proposal, because it takes away from you the bargaining rights which you acquired under law by virtue of your certification. Is that a correct statement of your position?

A. Correct.

Q. And that is the position that you have steadfastly maintained throughout these negotiations, is it not?

A. That's right.

Q. You took that position easily within the space of an hour after it was first presented to you?

A. As soon as I heard it.

Q. As a matter of fact the position had been stated by you in open negotiations meetings as early as January 10, had it not?

A. That's correct.

Q. And that's when you threw your pencil down on the table and, as you testified before, said, "I would never

agree to such a proposition even if you gave us five hundred dollars across the board increase”?

A. That's correct, “because”—and so forth.

Q. And it has been your position steadfastly throughout these meetings that you would never sign a contract with that provision in it?

A. As worded.

Q. As worded. Yet you did put II-A, with minor additions and a major extraction into the so-called Ball proposal, did you not?

Mr. Wilson:

Object to the form of the question, “minor” and “major.”

Trial Examiner Royster:

What was put in the Ball proposal appears in the proposal at any rate.

By Mr. Dibrell:

Q. In other words, in the Ball proposal you included all of II-A with the exceptions of the provision that the final decisions of top management should never be reviewable by arbitration?

Mr. Wilson:

Object. The Ball proposal is in evidence and speaks for itself.

Trial Examiner Royster:

Sustained.

♦ Mr. Dibrell:

I grant that, but I must, in order to make my question intelligible to the witness, I must at least direct his attention to what part of the proposal I am talking about.

Trial Examiner Royster:

You can tell him what the Ball proposal contains, as he well knows, I suppose.

By Mr. Dibrell:

Q. You did cut out the provision that arbitration, that the final decision should not be further reviewable by arbitration?

Mr. Wilson:

Object.

Trial Examiner Royster:

Sustained. You have the right there—the man knows what is in there. Why ask him what is in the document? We know what is in there.

By Mr. Dibrell:

Q. Is it not a fact that the disagreement that has existed throughout this thing isn't on II-A insofar as it attempts to outline certain company prerogatives, but is rather on the question as to whether or not the decisions of management in respect to such matters should be further reviewable by arbitration?

A. If I understand your question, you are asking me whether or not arbitration is the stumbling block instead of Article II-A. I am sorry—that rambling in there—

The Witness:

Could I have the question read again?

Mr. Wilson:

Before it is read, I will interpose an objection to the question insofar as it states "Isn't it an agreement." The witness has testified to innumerable disagreements.

Trial Examiner Royster:

We will have it read and we will see.

(Record read.)

Trial Examiner Royster:

I will overrule the objection.

A. No sir, on the Ball meetings, we offered to eliminate arbitration together with the no strike clause and you refused.

Mr. Wilson:

May I have the answer read please?

(Record read.)

By Mr. Dibrell:

Q. Prior to the time Mr. Ball came into the picture, had you ever made such a proposition or proposal?

A. I don't think I did. I don't remember.

Q. In other words that was one of the things that was Mr. Ball's idea?

A. I wouldn't say it was Ball's idea. I stated it was offered to you. Whose idea it was, I don't know. The Committee met with Mr. Ball and we talked these things over.

Q. Then it was the first time that the Committee made such a proposal in respect to II-A and arbitration and no strike clause?

A. I think so.

Q. By the way, what is the—what was the position of the contending parties in respect to the no strike clause and its relation to paragraph II-A, by the latter part of the last meeting, on July 25?

A. The position of the Union, if we would come to some type of agreement on II-A, the Company would

have as its own prerogative the matter as to whether or not a no strike clause was included in the contract. In other words, the Company could put it in there. They could leave it out. It was agreeable with the Union.

Q. Incidentally, it was included in the original draft of the contract—

Mr. Wilson:

Object on the grounds it is in evidence.

Trial Examiner Royster:

Sustained. Let's not question the witness about these documents in evidence unless it clearly appears to be necessary to do so.

By Mr. Dibrell:

Q. Had it not been discussed between us in the Ball meetings that the net results of the no strike clause, when coupled with II-A, as written, would be that the Union, by agreeing to the no strike clause, would have contractually given up the right to use its economic strength which it would otherwise have retained?

A. Yes sir.

Q. That is correct, isn't it?

A. Yes sir.

Q. And did we not have considerable discussion at that meeting as to whether or not the no strike clause would be elaborated upon or changed to fit the objections of both parties to its inclusion or exclusion, to see whether or not there was some way it could be fitted into II-A?

A. I don't remember that—I remember the discussion on whether or not the no strike clause was in, and I remember the Company stating it was an original proposal of the Union and now they were retracting one of the

paragraphs we had agreed to. As far as changing or amending the no strike clause, I don't remember that conversation.

Q. There was considerable discussion about it, wasn't there?

A. As to whether or not the no strike clause was in that, the Company said it had to be in the contract.

Q. And don't you recall, Mr. Stafford, that the Company, through me, suggested that it could be provided that the right to strike in order to express dissatisfaction with final company decision might be retained by the Union, whereas its right to strike for other reasons, such as dissatisfaction with the wage schedules, which it would have agreed in the contract, should not be retained by it.

A. I don't remember it that way. I remember the way you stated it, that the Union, for any reason wanted wage increases and the Company wouldn't grant it, they could go out on strike, and that is the way I remember the conversation.

Q. We pointed out if you had a no strike clause of any character in your contract, then you could stop work for whatever reason or pretext you wanted?

A. That is true.

Q. And it was for that reason that we thought that there should be some character of no-strike clause incorporated into the contract?

Mr. Wilson:

Object on the grounds this witness couldn't know what the Company thought.

By Mr. Dibrell:

Q. Was it not said to you by me that was our position?

The Witness:

Would you read that?

(Record read.)

A. Yes.

By Mr. Dibrell:

Q. Now, during the afternoon of July 25, our last meeting, did I not repeatedly ask of you whether or not a work on the approach of the no strike clause might help to solve our difference with respect to II-A?

A. I don't know whether you did repeatedly or not, but the Union told you—I told you—

Q. Please, first, what did I tell you? Then you may explain.

A. You wanted to know by the elimination of the no strike clause, could we reach an agreement on II-A. You indicated to me that the company was willing to eliminate the no-strike clause from the contract. And I told you if we could come to an agreement on II-A, the Company could call the shot. I used those words, the slang, on whether or not the no strike clause would be in or would not be in the contract.

Q. Now, is that all that you said to us, or did you also add to that that if we could come to an agreement on II-A and on wages, the Company could call the shot?

A. I did not mention wages in that.

Q. Did I not request you during the course of that meeting to discuss with us either the elimination or the changing and elaboration of the no strike clause?

A. I have testified as to what I remembered in that thing.

Q. Well; either a yes or no answer. Did I not ask and did you not refuse to do so?

A. I do not remember.

Q. Do you remember early in negotiations that one of the complaints voiced chiefly by Mrs. Imlay and Mrs. Beal, as members of the Committee in the Negotiations, was that there was no uniformity or dependability of treatment of employees on the lower levels of management.

Mr. Wilson:

Object. I don't understand that—"the employees on the lower level of management."

Mr. Dibrell:

Withdraw that question.

Trial Examiner Royster:

All right.

PAGES 397-403 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Trial Examiner Royster:

But the statement in evidence—suppose the witness says "no" and it is, and suppose he says "no" and it isn't.

Mr. Dibrell:

The question is whether they were discussed prior to this time.

Trial Examiner Royster:

You asked him that and he said they were discussed.

I will sustain the objection on this last question.

By Mr. Dibrell:

Q. Prior to the Ball meetings, what had been the stated position of the Union to that part of the second paragraph of II-A in the letter of January 17, which provides that it is agreed that the final decision of the Company made by

top management officials shall not be further reviewable by arbitration?

A. The position of the Union was that Article 2-A invaded the rights granted us by the law.

Q. May I have an answer, Mr. Stafford?

Mr. Wilson:

He is giving the answer. He asked what the position was, and he is stating it.

Trial Examiner Royster:

The question is with respect to that portion of 2-A which refers to arbitration of a final decision of top management, was any position expressed by the Union as to that precise section of 2-A.

A. I think we expressed an opinion that even though 2-A did invade the rights, that with arbitration, that would be one way we could retain partially those rights. We were not agreeable to stop with top management. I think that was the position.

Q. Your position was in any event you had to have arbitration of top management decisions, is that correct?

A. With Article 2-A?

Q. Yes.

A. Yes.

Q. How early in the negotiations did you take the position that you would insist upon arbitration of the decisions of top management of Company in respect to the matters covered by 2-A?

A. Within the first hour you gave it to me.

Q. Within the first hour. Have you ever receded in any manner or to any extent from that position taken?

A. Yes, I have offered to leave the whole thing out, Article II-A and Arbitration.

Q. Have you offered to recede from that position in any other manner or to any other extent?

A. I have never receded from the position I would bargain away our bargainable rights.

Q. Amongst which, you stated was the right to arbitration?

A. No, sir.

Q. Well, what was your statement with respect to arbitration?

A. That with II-A, we had to have arbitration.

Q. Did you state that a contract that you would not sign, that you could not sign a contract containing a management prerogative clause as was the II-A clause, unless that Contract provided for arbitration of the final decisions of the management?

A. I think I answered that question just now. Article II-A took away our bargainable rights and I refused to give those up without arbitration. We had to have some way to police that agreement.

Q. And is it not a fact, Mr. Stafford, that the expression you have just used, that you had to have arbitration as a way of policing the contract, is an expression that you have used literally hundreds of times throughout the course of this negotiation?

The Witness:

May I explain my answer, Mr. Trial Examiner?

Trial Examiner Royster:

You haven't given it yet. Give the answer and then explain it.

A. The answer is yes. Here the Company was asking me to give up the rights to bargain and the things granted me by law, asking me to give up arbitration, and in the

working rules, they gave me a set of working rules and retained in themselves the right to change those rules without any notice, any time, any day, any week they wanted to. The seniority plan is in the working rules; but you have another rule there—an Article that did this—and we discussed this thing in an overall picture, and that is the way it was.

Q. What was the stated position of the Union in these contract negotiations, in respect to the statement of Company's position contained in Article 2 of the letter of January 17, which reads: "This counter-proposal, however, is not to be construed as the taking of any position by the company that it will not discharge its duty to continue bargaining, as required by law"? What was the stated position of the Union in respect to that statement in Company's letter of January 17? It is on page 2 of the letter.

(Document handed to witness.)

A. I have a note here in my writing. But I can't remember any position being taken by either party on that. I know there was discussion on what constituted bargaining, and you said, "We will meet with you any time as long as you want, discuss everything with you, but we are not required by law to recede from any position." I remember that. I don't know whether it was in connection with this or not. I can't answer your question.

Q. As a matter of fact, Mr. Stafford, in your original contract proposal, to which this Article 2 of this letter of the 17th is addressed, you had requested the establishment of a Standard Negotiation Committee, hadn't you? And in our letter, in our counter-proposal, we said we would not be willing for the establishment of a Standard Contract Negotiating Committee but we told you we recognized we had a duty, not only prior to the signing of the

contract, but at all other times, to negotiate with the Union upon any points the Union cared to negotiate, which were within its bargaining authority. Didn't we tell you that?

A. Yes, sir.

Q. Do you remember discussions that we had as to the right of the Union to negotiate with us and bargain with us any demotions or promotions that the Company had made, or any discharges that the Company had made, with which the Union or any employee and the Union, in its behalf, felt aggrieved and dissatisfied?

A. We had discussions on that.

Q. Do you remember that I pointed out to you, Mr. Stafford, that outside arbitration of those decisions was actually, in effect, the negation of the right of the Union to bargain on?

A. I don't remember that.

Q. Don't you remember that I told you that if the Union and the Company agreed that if dissatisfaction arose between the Union and the Company as to a company decision, the matter would be settled by arbitration, that this agreement, of necessity and in itself, ended the right of the Union and Company to further negotiate or bargain in respect to such matters?

A. I believe so.

Q. Do you remember in respect to the question of arbitration that we advised you that the Company had in force a union contract which did not provide for arbitration?

A. Yes.

Q. That contract was the contract with the Industrial Agents, was it not?

A. Now, this is your statements to me that you are saying you made?

Q. I am asking if you remember my having told you these things.

A. That's right.

Q. Do you remember my having showed you the Industrial Agents' contract?

A. Yes.

Q. Do you remember my having shown you the provision therein that certain decisions of management were not subject to arbitration?

A. Yes.

Q. Do you remember that amongst other things was the subject of transfer and of discharge?

A. I can't remember exactly the items. I remember your showing me the Industrial Agents contract and saying it did not contain an arbitration clause. I didn't look at it. I said, "I don't care what the Agents have. They don't have an Article 2-A." And then Wilson showed me where they did have an arbitration clause and we got into an argument about that.

Q. Well, I will ask you now whether or not the Industrial Agents' contract, to which you are referring, provides that there shall or shall not be arbitration of the Company's transfer or discharge of an Industrial Agent.

Mr. Wilson:

Object on the grounds it is immaterial and irrelevant whether it does or doesn't.

Trial Examiner Royster:

I will sustain the objection.

By Mr. Dibrell:

Q. You did at the time see a copy of the Agents' contract, and now have one, don't you?

Mr. Wilson:

Object to the repetition and asking him if he saw one, because he just testified Mr. Dibrell showed him one and whether he has one or not is entirely immaterial.

Trial Examiner Royster:

Let him answer.

A. I saw it; I do not have one in my possession, either in Galveston or Port Arthur.

By Mr. Dibrell:

Q. Does any of your Committee have one?

Mr. Wilson:

Object on the grounds it is immaterial.

Trial Examiner Royster:

I will sustain the objection. What difference does it make?

Mr. C. G. Dibrell:

What is the number of the so-called Ball contract?

Trial Examiner Royster:

34.

PAGES 454-455 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

A. You said the people did not understand the insurance business and you would not have someone unfamiliar with your business come in, trying to tell you how to run your business. You repeated that many times.

Q: Did we attempt to justify our position on any other basis?

A. No.

Q. Is it not a fact that not only in the May 11 meeting but at practically every other point in the meetings at which the matter came up, that we explained to you that the theory upon which the Company took the position that it didn't want outside arbitration and the basis of its justification for not wanting it, was you were coming in initially with a contract, into a newly organized bargaining unit in a company that had been in existence for forty years, that had within the bargaining unit literally hundreds of employees who had been with the Company for upwards of twenty years, and that some of those employees had been with the Company for numbers of years and had not progressed upward through the ranks but had made little, if any, progress from the point at which they had come in. Others of the employees had progressed rapidly and had made much greater strides and we did not think that any outsider not familiar either with the operation of the insurance business or the particular operation and history of the American National's home office could be expected to reach as proper conclusion as to whether Mary Smith or Jane Jones should have a certain promotion as could Leonard Mosele, and that at this stage of the game, bearing in mind this was the first contract negotiated between us, that the Company was not prepared to run the risk, as it saw it, of disruption in its operation, which would, of necessity, flow at this early state of the game, in outside arbitration. Now, isn't that what I told you, not one time, but fifty times during the course of this negotiation?

A. It sounds more or less right. I won't say you said those words.

Q. You almost know it by heart, don't you?

The Witness:

May I get our argument in the record?

Trial Examiner Royster:

Not now, but upon redirect examination, I shall be glad for you to do so.

By Mr. Dibrell:

Q. The point I am trying to make to you and I want to put this question to you—did not I, as the spokesman for the Company, undertake to justify this position by giving you the reasons for it?

A. You gave me those reasons.

Q. As we saw them.

A. That's all.

Q. And the simple fact of the matter is you didn't agree to the validity of the reasons.

Mr. Wilson;

Object to the "reasons."

Trial Examiner Royster:

Sustain the objection.

PAGES 846-855 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

A. I do not recall that there had been any demand made prior to January 10 for any counter-proposal of the Company to the proposal made by the Union. It is my recollection that it was agreed that since the Union had not seen fit to complete, or to furnish the Company its complete demand until December 15, the Company could hardly have been in position to give a counter-proposal by December 15.

Q. The next meeting date, I believe, was January 10, is that right?

A. That is correct. Now, by the meeting date of January 10, the Company's committee, consisting of Mr. Charles Dibrell, Mr. Leonard Mosele and myself, as a result of

conferences between ourselves, had given considerable thought to the character of prerogative that, in our opinion, the Company was entitled to maintain for its management, as well as considerable thought to the character of safeguard which would make the retention of such prerogatives to which we thought the Company entitled, of value and worth to the Company, and invulnerable to attack. We had, therefore, about evolved in our own minds the approach to the subject, the thoughts, the positions which finally became crystallized in paragraph II-A. And early in the meeting of January 10, 1949, we orally stated to the Union that that was going to be the position of the Company, that it was the position of the Company that had been arrived at by consideration by our committee as to what was proper, during the interval between the meetings.

As a matter of fact, it is my recollection, though I could be wrong in this respect as to the sequence of the dates between the 10th, 11th, and 12th, but upon one of those dates, the counter-proposition, the proposal that has subsequently become known as II-A, was sufficiently crystallized that I dictated it and Mr. Wilson took it down, in—

Q. You mean Mr. Stafford?

A. I mean Mr. Stafford, the chairman of their committee, took it down in pencil. I distinctly remember when Mr. Stafford completed taking it down in pencil, there was a lull, a stop in the meeting, during which he studied it. After studying it, Mr. Stafford leaned back in his chair, threw his pencil down and stated that the Union would never agree to a contract with that kind of proposal, that kind of company prerogative in it.

At that stage of the game, and literally ever since that time, the vast bulk of time consumed in the meetings has been consumed in an effort on the part of the Union to

convince the Company that the prerogatives sought to be maintained by it in II-A were wholly without lawful authority, with wholly at variance with and in contradiction to the rights guaranteed to Unions under the National Labor Relations Act, and that, therefore, the mere insistence by the Company of such a paragraph as II-A, in and of itself, constituted a refusal on the part of the Company to bargain in good faith collectively with the Union.

On the other hand, it has been the Company's position, consistently maintained, and the Company's approach to the problem, consistently followed throughout the vast bulk of the time consumed in these meetings since that time, that if the Union would ever sit down with the Company across the board, as we were trying to get them to do, and carefully analyze what was said in II-A, they would find out that it was not and could not be construed as any invasion of the Union's guaranteed right to negotiate or bargain in respect to matters, whether they came in company prerogative or whether they came in the scope of union prerogative.

It has been the effort of the Company's Negotiating Committee to make the Union see, get the Union to agree or understand that insofar as the prerogative and scope of II-A, and as set forth clearly in its terms, there was no attempt upon the part of management to usurp and to keep inviolate to itself any other management prerogatives than it ought properly to have; and that if the Union would follow at least the attempts of the Company to justify its position, that it would soon reach the inevitable conclusion, that the real unpalatable part of II-A was not the Company's prerogatives as set forth therein, but was, rather, the provision that final decision of top company

management on such matters should not be further reviewable by arbitration.

In the discussions, Mr. Stafford, numerous times, lapsed into the same sort of approach to the problem into which he lapsed in his testimony upon this stand, and that is, that he would say that the effect of II-A was to make the decisions of management final and binding. Each and every time, unless by inadvertency it was skipped, that Mr. Stafford did lapse into such an approach or what we thought was mis-reading of the paragraph, his attention was called to the fact that all that II-A said was that the final decisions of management, of top management should not be further reviewable by outside arbitration, and it was repeatedly and continued to be repeatedly pointed out to Mr. Stafford that it was the position of the Company that rather than deprive the Union of a right to negotiate, a right to bargain in respect to such top management decisions with which it may be dissatisfied, that in fact the net result of II-A and its provisions as to arbitration would be the opposite, that it would give to and retain in the Union as well as the Company the right and the opportunity to bargain in respect to dissatisfaction on the part of the Union with Company's decisions that it would otherwise have contractually given up.

In connection with II-A, the point of difference has practically without exception and practically continuously, been the insistence of the Union that they should have a right, as was stated by Mr. Stafford on more than one occasion, even in his testimony as well as in the meetings, that the Union was entitled to a way to police its contract. And that was the approach that was used by Mr. Stafford. That was the argument that was used by Mr. Stafford.

During the meetings of the 10th, 11th, and 12th of January, there was, as I recall it, practically no discussion and no attempt at discussion on the Union's part, of wages. There was discussion in respect to promotions, in respect to demotions, in respect to transfers. But every time that any real effort was made as between Mr. Stafford and his committee and me and my committee, to get into any effective discussion of promotions, demotions, and transfers, it became immediately obvious and was so stated, that those questions were tied up in II-A. Wherefore, discussion of them was practically meaningless until an agreement could be reached on II-A, and when agreement had been reached on II-A, the solution of such problems as there was in connection with those problems automatically came.

Q. Now, at that point—was the position ever taken by the Company and the Company's Negotiating Committee that it would not negotiate or talk with the Union's committee about the various provisions in the proposed contract of December 15 and the Company's letter of January 17, with respect to all matters mentioned therein?

A. No, sir. The Company's committee has never taken the position it would not discuss, would not negotiate, would not argue about, or whatever you might want to call it, any points, including those points which the Union cared to discuss. And the history of the negotiations, as has been rather ably related by Mr. Stafford and Mr. Mosele, is abundant to the effect there was continuing discussion of all such things down to the end, at least to the end of the July 25 meeting.

Mr. Wilson:

I would like to interpose this objection, that while I was objecting to Mr. Dibrell testifying when he was in the

counsel's chair, I am now objecting to his acting as counsel while he is in the witness chair. I would like for him to stick to the witness and not argue as to the effect of any evidence given by Stafford, Mosele, or anyone else.

Trial Examiner Royster:

Overrule the objection.

- A. (continued) Amongst other things discussed at the January 10, 11, and 12 meetings, which was finally incorporated into the counter-proposal letter dated January 17, from the Company to the Union, was the matter of grievance; how the grievances should be handled, from their inception or from their becoming known until the final disposition or at least the indisposition of them, which was to be provided.

During that part of the negotiations, Mrs. Beal and Mrs. Imlay advised all members of both committees that one of the most prevalent causes of discontent, dissension, dissatisfaction amongst the employees of the Company arose from the fact that there was no continuity, sameness of treatment as between various employees and the Company; and they ventured the opinion, in the open meeting, by way of statement that the reason, or at least one of the reasons for that was that the treatment that any particular employee got too often resulted from the individual feelings of the immediate supervisor, immediate boss, whoever it might be, that would get a grudge against that employee, or, on the other hand, favor that employee as against other employees. And there was too much possibility of favoritism being shown as between the employees; and that it was their opinion that if a way could be found to in some manner make uniform the treatment accorded

to all employees who felt or might feel themselves aggrieved, that it might be a big step forward.

We, therefore, began to discuss and evolve by such discussion, the grievance machinery as is set forth in an attachment, I think, to the letter of January 17. But the exhibit speaks for itself. It may be in the body of the letter. It was proposed by the Company that a procedure be established and adhered to, under the terms of which, any employee of the Company feeling themselves to have been aggrieved by any decision, on any of the subjects contained in II-A or any other subject, by any supervisor or, so to speak, boss employee in the American National, that they could get their complaints, their grievance, what they had to say, before it swiftly and effectively up the line to a point where it was at least hoped that the decisions would no longer be subject to being swayed or caused by petty jealousies or things of that nature.

It was pointed out to the Union that the top management officials of the American National were, and of necessity, had to be concerned with the efficiency of the operation of the home office, the home office being the hub, so to speak, that held together widespread, farflung insurance operations in thirty or more states in the United States, and that it would not be expected, or should not be expected that the decisions of top management would be other than in conformity with what was properly required for the efficiency of the home office. And it was pointed out that the man who would be entrusted with the managing of top management decisions would be Mr. Mosele. As a matter of fact, the two ladies, at the meeting openly expressed their feeling that Mr. Mosele's decisions would probably come as near fitting those qualifications as any man whom they knew.

The counter-argument was offered by the Union that you can't get away from the normal, human tendency to back up your own, so to speak, and it could only be expected that whatever the lower level manager had decided, that that would, regardless of the reasons for it, for merits or demerits of it, be carried on through top management. And we argued about that at great length.

We pointed out and then began to formulate and make clear or attempt to make clear to the Union the fundamental basis, as we saw it, of the Company's objection to further review of its decisions in respect to matters covered by II-A by outside arbitration. We pointed out that the business of writing and servicing life insurance contracts is a complex business, that there were few people who knew the intricate workings of the complexity of that kind of an operation, and it could not be reasonably expected that the proper decisions would be made by outside arbitration; that we feared that the decisions reached by outside arbitration would, as they all too frequently are, as we told them, the result of compromise rather than the result of finding the correct answer and sticking to it; that in any event, whether our fears or thoughts in respect to outside arbitration were sound and justifiable or not, they were genuinely and honestly our convictions in the matter, and it was because we had reached such a conviction that we were stating to them that we thought we ought to be entitled not to agree to outside arbitration of the disputes at that time.

On the 12th of January, adjournment was agreed upon until the 17th day of January. That is my recollection. We didn't meet on the 17th for reasons that have been told by Mr. Stafford. But we did meet on the 18th.

Q. Now, before you leave that January 12 meeting, will you state whether or not on the afternoon of January

12, Mr. Stafford brought some additional people in to sit with him in this meeting and introduced them to the committee?

A. Yes, he did. I don't recall their names, but I know they were brought in and introduced to the meeting as officials of some character or other with the American Federation of Labor.

Q. Was one J. W. Parks, Director of A. F. of L.?

A. That's correct.

Q. And W. L. Hines?

A. That sounds correct.

Q. At that time, II-A, in its first dictated form, before it became known later as II-A, had already been given to Mr. Stafford?

A. That's correct.

Q. Do you recall whether or not Mr. Stafford, in introducing these men and making his preliminary remarks in the meeting, said anything with respect to whether or not in his opinion the bargaining to that date had been in good faith?

PAGES 859-862 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Q. Now, you have heard during this testimony Mr. Stafford make numerous statements from the stand that he has made and offered any number of methods of getting around II-A, so that we could reach a contract on II-A. Please state, if you recall, what, if any, propositions were offered by Mr. Stafford to compromise or get around II-A, as he puts it.

A. The only proposal to get around II-A, as he calls it, of which I am aware was proposals that accepted the Company prerogative sought by the Company in II-A but made

the final decisions of management, as provided in II-A, and the grievance procedure, subject to further review by arbitration. Or to put it differently; the character of proposal as is set forth in the so-called Ball contract, which is the second and only proposal that has been—the second and only other proposal that has been made by the Union to the Company, and is the proposal which I now understand in the so-called Ball meetings and later is the proposal the Union now makes to the Company, which proposal, of course, speaks for itself.

Q. Of course, Mr. Stafford has made no additional, as you state, additional written propositions to get around II-A?

A. Mr. Stafford has made no additional propositions to get around II-A other than the proposed Ball contract.

Q. The only propositions or discussions that have been had with respect to compromises or getting around II-A were the verbal discussions that have been had in these meetings that have been so extensively testified about already?

A. That is correct.

Q. In each instance, it is a fact, is it not, that every time Mr. Stafford would get on to the subject, any proposition he would propose would be that the Company's decisions with respect to promotion, demotion, discharges, schedules of work, would have to be reviewable by arbitration or else the Union wouldn't buy it?

Mr. Wilson:

I object to the brothers revealing their roles and having the one in the counsel's seat do the testifying for the one in the witness seat.

Trial Examiner Royster:

I will sustain the objection to the leading character of the witness.

Mr. C. G. Dibrell:

I was trying to hurry it up. It was understood when Stafford was put on the stand—

Mr. Wilson:

I will waive the swearing of Charles and we will take his testimony if he wishes to testify. I have no objection to your shortening it up by having Louis testify. But he is the one to testify at present.

Trial Examiner Royster:

Go ahead.

By Mr. C. G. Dibrell:

Q. On any of the alleged proposals to compromise II-A, was arbitration mentioned by Mr. Stafford?

A. In every discussion of II-A or of any phase of II-A, the objection stated by the Union to it was the fact that it needed a way to police the contract and that it must have a provision for arbitration review of the decisions of top company management in order to ever be able to accept II-A or any part thereof.

Q. Back in January 10, you testified that when you dictated the original of what later became II-A, that Mr. Stafford threw his pencil on the table and stated he would never sign a contract with that provision in it. Please state whether Mr. Stafford said anything else at that time.

A. Mr. Stafford stated that it was his conception that the signing by the Union of a contract containing II-A would be the contracting away by the Union of the rights to representation that had been guaranteed to it under the

Labor Relations Act and secured to it under its certification.

Q. Was anything said by Stafford at that time in respect to wages in connection with II-A?

A. I don't recall that there was any discussion of wages. I do recall that Mr. Stafford said that if the Company has the right to make final and binding decisions on schedules of work, for instance, and promotions, that you can create any kind or character of a job and then do away with it. He said that. That was the extent of the discussion in respect to wages.

It was pointed out to him by me at that time, as it had been before and as it has been since, first, there was no provision that the Company decisions should be binding and final, that the Union had the full right to ask the Company to go into negotiations and bargain with them as to any of such matters and to express its dissatisfaction with the Company's action in whatever way it saw fit; that the sole intention, the intendment or result of II-A was that there not be outside review by arbitration of these decisions.

He then said that he would not agree to II-A and to the lack of arbitration if the Company were to offer a five hundred dollar across the board increase to its employees.

Q. Has the Union ever receded from its position taken on Company's proposed II-A, since January 10, 1949?

A. It has receded in its position in respect to Article II-A. As a matter of fact, it has incorporated Article II-A almost in its entirety in the proposal that they now have before us, which is the so-called Ball contract. But they have not receded from their demand, their insistence upon review by arbitration of final decisions of top management.

PAGES 872-874 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Therefore, in all of the meetings, from the date which I stated, on through and, if you please, right on down through the July 25 meeting, which is the last one, there has been considerable discussion as to what the law required of the Company to meet the requirement of good faith bargaining. And it has been one of the points that has been discussed, has been argued about almost more than the remainder of the points of difference put together. The Union committee, through Mr. Stafford, would start and would end the various meetings by the blanket assertion, in open meeting made to us, that, "You are not bargaining; you are not bargaining; you haven't been bargaining; you don't propose to bargain." And almost without variation, I would at least initiate the argument by asking him, "Mr. Stafford, just what is it that we have not done in these meetings are we required to do to meet the test of good faith bargaining?" Or, "What is it we have done that we should not have done that causes us to fail in meeting the test of good faith bargaining?" There was no answer to that question—no answer to that question, at least satisfactory to those on our committee was at any time forthcoming and has not as yet been forthcoming.

We would agree in our negotiations that our differences were whether or not the Company had to agree to arbitration, as was asked for by the Union repeatedly, repeatedly, repeatedly and repeatedly. Finally, in the Ball contract, a second time, in that, we were apart in that the Company would not agree to the Union's wage demands; I would ask Mr. Stafford whether or not in his opinion, as a negotiator at the table, the Company was required to recede from the position that it had taken in

respect to arbitration in order to meet the test of good faith collective bargaining, and Mr. Stafford would say no, it was not his opinion that we had to so recede. I would ask Mr. Stafford whether or not it was his opinion that the Company had to recede from the position that it had taken in respect to the wage schedule that it had offered, in order to meet the test of good faith collective bargaining. And Mr. Stafford would say to us, "No, it is not my opinion that you have to recede." And I would then ask Mr. Stafford, "Well, now, Mr. Stafford, what is it that we are required to do more than we are doing?" And Mr. Stafford would say, in effect, "I don't know, but you are not bargaining in good faith." I would tell Mr. Stafford that if there was anything that he could show to us that we were not doing that we were required to do to meet the test as established by the law and the Board and Court decisions in construction of the law, we wanted to know it because we wanted to do it.

We have never at any stage of these negotiation proceedings been able to get any suggestion from either Mr. Stafford or Mr. Nile Ball, while he acted as chairman of the committee, as to what we had to do in their opinion. As a matter of fact, it is in the recordings of the so-called Ball meetings, not one time, but on several times, that Mr. Ball either in answer to my question or gratuitously stated that it was his opinion that the Company was at that time and in those meetings bargaining in good faith and that there was nothing of which he knew as to the earlier history of the meetings which caused him to believe we had at any prior time refused to bargain in good faith.

Mr. Ball stated to us in the so-called Ball meetings that it was his opinion and the position of his committee that if a wage increase agreeable to the Union could be agreed upon, that a contract could and would be reached with

little delay, that there appeared to him to be nothing of substantial importance that was not either agreed upon or which obviously would not be agreed upon in very short order if the basic wage agreement could be reached.

I told Mr. Ball in those meetings that the Company's position in respect to wages had not been changed and that we, as representing and with authority to speak for the Company, were not prepared to offer an increase in wages.

PAGES 376-378 OF THE STENOGRAPHIC TRANSCRIPT  
OF THE TESTIMONY TAKEN BEFORE THE TRIAL  
EXAMINER.

Subsequent meeting was arranged for May 30, and at the outset of the meeting of May 30, I advised Mr. Ball and his committee that the position of the Company in respect to the wage offer had not changed.

There was again at that meeting, as there had been on the others, the discussion as to whether or not the Company had to raise its wage and had to agree to arbitration, neither of which the Company was as yet willing to do. I have consistently told the representatives of the Union, particularly Mr. Stafford, chairman of their committee, that the positions of the Company stated in these negotiation meetings were not final. They were not given on a "take it or leave it" basis. They simply were the same as they had previously been; that it was, as I conceived it, the very essence of negotiation that the Union should have the continuing right to attempt to convince the Company that they were entitled to that which they were asking, or at least to part of that which they were asking, and that the Company's committee stood ready to accept and honestly consider any and all facts, any and all persuasion, and all argument that they saw fit to bring to bear, so to speak, on us in our negotiations; but that I felt that

the Company was not required to recede from positions as to arbitration and wages honestly taken, in order to meet the test of collective bargaining. I told Mr. Stafford and Mr. Ball numerous times in these meetings that it was my conception that it was our committee's conception of the Labor Relations Act that they were a set of rules, so to speak, by which the relations between management and labor were governed; that one of those rules was that neither side had to recede from any position taken honestly, bona fide and in good faith; that the contests, so to speak, between labor and management encompassed the determination of those sort of questions but that that determination, that contest between labor and management had to be carried on under the rules as set forth in the Act and in the Board and Court decisions construing it. So that, I told them repeatedly, was the kind of legal argument, so to speak, we were having. We did not ever tell the Union that we would agree only to that which we had to do under the law.

We did point out that the agreement requested of us and made early, in respect to two phases of the submitted contract, were governed by law and, therefore, as we understood it, was beyond the scope of our changing them by attempting to contract otherwise. There was never any dispute on either of those two points.

That sort of situation, that sort of discussion continued on down through the meeting of July 25, 1949, which is the last meeting that we have had. I pointed out repeatedly in these meetings and again as late as the Ball meeting that we had had no additional proposals from the Union since our counter-proposal of January 17, except insofar as the proposal came from the Ball contract. We went

down the Ball contract in open meeting, in detail, seeking first the source of each provision, each line, each word, if you please, that was in the Ball contract, and we made notations in the margin of the Ball contract—everybody, at the same time—as to whether they came from the Union's first proposed contract or whether they came from the Company's letter of January 17, 1948, or whether they were renewals constituting new matter to both of them.

The bulk, the vast bulk of the Ball contract will appear, as it did appear to us then, by comparison with the original Union contract and the letter of January 17, to come almost in its entirety from one or two or a combination of those sources. We pointed out to the Union, both before the Ball meetings, at the Ball meetings, and again in July of this year, that the Union has never given to the Company any concrete proposition in dollars and cents of wage demand other than the original Step Rate Schedule attached to their December 15 proposal, calling for a hiring-in rate of a messenger boy of \$177.50.

GENERAL COUNSELS' EXHIBIT 8 BEING THE ORIGINAL CONTRACT PROPOSED BY THE UNION.

Articles Of Agreement

between

The American National Insurance Company  
and  
Office Employees International Union, Local Number 27  
of the  
American Federation of Labor

This agreement is made by and between the American National Insurance Company, hereinafter referred to as the Company, and the Office Employees International Union, Local No. 27, hereinafter referred to as the Union.

The contracting parties desire that a maximum of well-being, contentment, and good will should result from the friendly deliberation on and fair disposition of all problems arising in the management-employee relationship.

Article I

Recognition

The Company recognizes the Union as the sole collective bargaining representative for all employees in the Home Office of the Company at Galveston, Texas, but excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads and all other supervisors as defined in the Labor Management Act.

## Article II

### Bargaining

Section 1: The Company, through its appointed representatives, will recognize the bona fide representatives of Office Employees International Union, Local No. 27, as the exclusive representative of all the said employees at its Home Office in Galveston, Texas, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Section 2: The Company will, through its appointed representatives, meet with the Bargaining Committee of the Union at regular monthly intervals and at such other times as may be necessary, for consideration of matters of mutual interest. Time spent by the employees in such conference shall be without loss of regular scheduled time or pay. The Business Representative of the Union will be present at such meetings.

Section 3: The Business Representative of the Union, party to this agreement, upon securing proper approval from the Company shall be entitled to access to the Company's Buildings, provided, he does not interfere with or cause workers to neglect their work. The Union will keep on file with the Company the name of its Business Representative.

## Article III

### Discharge of Employees

Section 1: The Company has the right to discharge any employee for proper cause. However, upon written request

made to the Company by a discharged employee, or his representative, not later than five (5) days after the date of his discharge, the Company shall, within (5) days from the receipt of such request, advise such employee, or his representative, in writing of the reason or reasons for discharge. Within five (5) days of being so advised, the discharge employee, or his representative, may file with the Company a complaint in opposition to said discharge, which complaint shall be disposed of as provided in the case of grievances under Section 2 of Article XIII. If the final determination is that such discharged employee was unjustly discharged, such employee shall be reinstated immediately to his former position without loss of seniority rank and shall be entitled to compensation for time actually lost in each workweek at his regular rate of pay.

Section 2: An employee who resigns or is laid off because of lack of work, will, upon his request, be furnished with a statement by the Company as to the character of his service with the Company.

#### Article IV

Section 1: The Company will furnish the Union, within thirty (30) days of the execution of this agreement, and thereafter upon written request by the Union, a roster of all employees covered by this agreement containing name, classification and seniority status of each such employee. Said roster shall be corrected upon presentation of proof of error by the Union. The Company will furnish sufficient copies of this roster to provide the Union files with three copies and each steward with a copy.

Section 2: Except as hereinafter provided, seniority shall be based upon length of continuous service with the Com-

pany as evidenced by the Company's employment records and said seniority shall be cumulative beginning with the date of first employment.

Section 3: Continuous service of an employee shall be deemed to have been broken by his:

- (a) Voluntarily quitting the service of the Company;
- (b) Absence due to discharge;
- (c) Absence due to lay-off or disability, or both, when such absence continues for more than one year, provided, however, than an employee injured while on duty with the Company shall accumulate credit for continuous service until termination of the period for which statutory workmen's compensation benefits are payable; or in case such benefits are no longer payable and the employee is still disabled, then employee's service shall continue until the employee's doctor finds that the employee is able to return to work;
- (d) Failure to leave his address or change of address with the Personnel Manager as provided in Section 5 of Article V or to report to work within ten (10) days after date of mailing of notification to report for work as provided in said Section 5.

Section 4: New employees and employees who are rehired after a break in continuous service (as defined in the preceding Section of this Article) shall be regarded as probationary employees for the first ninety (90) days of their employment, and probationary employees may be laid off or discharged as exclusively determined by the Company during said probationary period. Probationary employees shall receive no credit for continuous service during such probationary period. At the end of such probationary period and if there has been no break in con-

tinuous service (as defined in the preceding section) during said probationary period, such employees shall receive continuous service credit from the date of hiring or rehiring.

## Article V

### Promotion, Re-employment and Lay-offs

Section 1: If a vacancy occurs in any classification, the employee in the next lower classification with the greatest seniority shall be promoted to such vacancy.

Section 2: Upon being promoted, an employee shall be given a trial period of ninety (90) days under competent supervision for training. Should such promoted employee be unsatisfactory at the end of such training period, he shall be returned to his former position or a similar position. The Company shall give the Union (5) five days' notice of the company's intention to return such employee to his former position. Vacancies created by returning such a promoted employee to his former position shall be filled by promotion by the next employee in line for promotion as determined above or in accordance with Section 1 above.

Section 3: An employee incapable of performing the duties of a job to which he has been promoted shall not lose his seniority rights to promotion when another vacancy occurs.

Section 4: It is agreed that in cases of ordinary layoffs or rehiring, the youngest employee in point of service in a particular type of work shall be the first laid off and the last rehired, provided that the Company shall consider the factors set forth in Section 1 of this Article.

Section 5: Upon being laid off, an employee shall leave with the Personnel Manager of the Company the address to which he desired notification to return to work to be mailed, and shall notify the said Personnel Manager of any change of said address. Notice to return to work shall be deemed given when such notice is deposited in the United States Mail (registered), addressed to the employee at the last address given by the employee.

## Article VI

### Workday and Work Week

Section 1: The established work week shall consist of five (5) consecutive days, beginning at 8:00 A.M. Monday.

Section 2: The normal work day shall be eight hours of work which shall be consecutive except for a lunch period of one hour.

## Article VII

### Wages

Section 1: The Company shall pay the employees covered by this agreement wages in accordance with the schedule and regulations set forth in Exhibit "A" which is attached hereto and made a part hereof (hereinafter called the "regular rate").

Section 2: For work performed not in excess of eight (8) hours per work day or not in excess of forty (40) hours per work week, the Company shall pay wages at the regular rate.

Section 3: For any work performed in excess of eight hours per work day or in excess of forty hours per work week, the Company shall pay wages at one and one-half times ~~the~~ regular rate; however, for work performed on Sunday, the Company shall pay wages at twice the regular rate. When overtime work is required in ~~any~~ office, such overtime work shall be distributed among the employees of such office equally.

Section 4: Any employee required to work on the following days shall receive overtime pay at the rate of two times the regular rate for such work and if not required to work on such days, shall receive pay for such days at the regular rate: New Year's Day, Thanksgiving Day, Labor Day, Memorial Day, Christmas Day, Texas Ind. Day, Fourth of July, and if any such day falls on a Saturday or Sunday, the next Monday shall be observed as the holiday.

Section 4: If an employee is required to make two or more trips to the Office within a regular day, he shall be granted an expense allowance of \$2.00 for each trip after the first trip. If required to report to the Office on any of his days' off, or on an observed holiday for which he is required to work a half day or less, he shall be granted an expense allowance of \$2.00 for each trip.

Section 5: An employee who replaces another employee who is on vacation, extended sick leave or leave of absence shall be paid as follows:

a. If the employee replaced has a higher classification than the substituting employee, the substituting employee shall receive either his regular rate of pay plus an additional 10c per hour, or the minimum rate of pay for the

classification of the replaced employee, whichever is the higher.

b. If the replaced employee has a lower classification than the substituting employee, the substituting employee shall be paid at his regular rate of pay, unless he has had five (5) days advance notice that he has been permanently demoted.

This section shall not apply to probationary employees.

### Article VIII

#### Vacations and Leave

Section 1: All employees who have completed one year's continuous service will be granted two weeks' vacation with pay and thereafter each year until the fifteenth anniversary:

Section 2: Commencing with the January 1st of the year in which the 15th anniversary of accredited service occurs, employees will qualify for three weeks' vacation with pay.

Section 3: During the first year of employment an employee will be allowed five (5) days sick leave with pay; during the second year of employment he will be allowed ten (10) days with pay; and so on until after twelve years of continuous employment an employee will be allowed thirteen (13) weeks with pay.

Section 4: Upon request, the Company shall grant an employee leave of absence, without pay. Such leave shall not affect the seniority status of an employee.

Section 5: Leaves of absence, without pay, for Union business will be granted upon written application of the Union.

## Article IX

### Miscellaneous

Section 1: When absent on jury duty, an employee will be paid his regular rate for time lost.

Section 2: There will be no discrimination against any applicant for employment or against any employee in regard to promotion, discharge, suspension, layoff, or sickness or accident, on account of sex, nationality, membership or non-membership in any church, society, fraternity or labor union, or on account of any activity taken in good faith in his capacity as a representative of other employees.

## Article X

### Military Service

An employee drafted into the armed services of the United States shall return to his former position or some similar existing position with full seniority rights and pay status the same as if he had been in continuous Company service; provided such employee shall be allowed ninety (90) days from the date of discharge to report for duty with the Company. At the request of any employee, he shall be furnished with a bona fide letter of intent outlining the above provisions.

## Article XII

## Strikes and Lockouts

There shall be no strikes, slow-downs or work stoppages of any kind during the life of this agreement, and there shall be no lockout of employees by the Company during said term.

## Article XIII

## Grievances

Section 1: There shall be no suspension of work because of any grievance of the Union or of an employee, but such grievances shall be settled in the manner provided in this Article.

Section 2: Grievances of employees shall be settled in the following manner:

(a) The employee shall first discuss the grievance with his immediate superior in an effort to settle it.

(b) In the event that the grievance is not settled pursuant to paragraph (a) above, it shall be reduced to writing in duplicate and submitted to the employee's immediate superior who shall note his disposition of the grievance on both copies and date, sign and return one copy to the employee. Upon request of the employee made within five (5) days of such disposition, the grievance shall be submitted to the person designated by the Union as the Union's Grievance Representative and the person designated as the Company's grievance representative. Such representatives shall, within five (5) days of the submission

of the grievance to him, dispose of the grievance, noting such disposition on both copies of the grievance, or notify the Company and the Union's Business Representative of their inability to agree upon disposition of the grievance.

(c) In the event that the respective Grievance Representatives are unable to agree upon disposition of the grievance, then the Union's Business Representative shall be called to meet with an executive representative of the Company to be designated by the Company and said representatives shall attempt to agree upon a settlement of the grievance.

(d) In the event that the Union's Business Representative and the officer designated by the Company are unable to agree upon and dispose of the grievance within five (5) days, the grievance shall be submitted to an arbitrator agreed upon by the Union and the Company, and if within five (5) days the parties are unable to agree upon an arbitrator, they shall jointly request the United States Conciliation Service to appoint an arbitrator. The grievance shall be submitted to the arbitrator promptly upon notification of his appointment, who shall render his decision as soon as is reasonably possible, such decision to be binding and conclusive on all parties, including the employee.

Section 3: Grievances of the Union shall be settled in the following manner:

(a) The representative of the Union shall present the alleged grievance to the Company in writing. Promptly after receipt of such grievance, the Company's representative shall arrange a meeting with the representative of

the Union and the said representatives shall discuss the grievance in an effort to settle it.

(b) In the event that the respective representatives are unable to agree upon a settlement within five (5) days of the initiation of discussions between them the controversy shall be submitted to an arbitrator selected in the manner provided in paragraph (d) of Section 2 of this Article and who shall proceed in the manner provided in said Section. The decision of such arbitrator shall be binding and conclusive on all parties.

Section 4: Costs of arbitration proceedings pursuant to this Article shall be shared equally by the Company and the Union.

#### Article XIV

##### Conditions

This agreement is subject to the provisions of existing laws, regulations, applicable Executive Orders and orders duly constituted authorities of the United States and Texas which are now or may hereafter be in force during the term of this Agreement.

#### Article XV

##### Term

This agreement shall remain in full force and effect until ....., provided, that, unless one party shall give written notice to the contrary to the other party not later than sixty (60) days prior to such expiration date, this agreement shall be automatically re-

newed for a period of one year from such expiration date. Unless similar notice be given by one party to the other, such agreement as so renewed shall be automatically renewed for another period of one year. In no event, except by express agreement between the parties in this agreement, shall this agreement remain in force beyond .....

In Witness Whereof, the Parties hereto have executed this agreement this ..... day of .....

Office Employees International Union, Local No. 27, AFofL.

AMERICAN NATIONAL INSURANCE COMPANY

.....  
 .....  
 .....  
 .....  
 .....

# GENERAL COUNSELS' EX. 9 BEING THE ADDENDUM TO SAME.

Galveston, Texas, December 15, 1948

Step Rate Schedule and Regulations

## Memorandum of Agreement

It is agreed by and between The American National Insurance Company Home Office of Galveston and Office Employees International Union, Local No. 27 (A. F. of L.) as follows:

This Step Rate Schedule for the establishment and administration of salaries for employees within the Union's bargaining jurisdiction shall be placed in effect as of .....

The Salary Schedule to be applicable under said Step Rate Schedule is attached hereto as Exhibit "A".

The Step Rate Schedule shall be administered as follows:

In determining the applicable rate on the initial installation of the Step Rate Schedule, the anniversary date of each employee will be established in accordance with Company records.

Service credit will be granted only for active service. An employee on leave of absence in excess of fourteen consecutive days other than Company business, Military Leave or Educational Leave does not accumulate service credit, nor will a step rate be made effective during a period in which an employee is on such leave of absence. In the event an employee's anniversary date occurs while he is on such leave of absence, his anniversary will be deferred until he has accumulated the necessary period of active service, and his anniversary date will thereafter be governed accordingly.

The custom of having some designated person belonging to the clerical force relieve the telephone operator at stipulated times during the day shall be continued and shall be considered as part of the duties of the aforementioned employee of the clerical force subject to Provisions of Article VII, Section 5 (a & b).

Various office machine operations which are performed by members of the clerical force now, or which will be assigned to them in the future, will be considered as part of the duties of said employees of the clerical force.

(a) It is agreed between the Company and the Union that when an employee is discharged, he or she shall be given two weeks termination notice, or two weeks termination pay in lieu of notice.

(b) It is also agreed that any Union member shall notify the Company two weeks prior to their leaving the employ of their leaving the employ of the Company. Either the Section "a" or "b" can be disregarded by mutual consent of both parties.

The adoption of the foregoing classification and wage schedule shall not operate to reduce the present rate of any employee.

Any holiday or sick leave shall be considered a day worked in the computation of overtime.

Any deferred vacation shall have preference of request.

There will be no discrimination between male and female employees in regard to smoking.

The Union requests the reestablishment of the fifteen (15) minute morning and afternoon rest period.

Dated this ..... day of .....  
Signed:

Office Employees International Union, A. F. of L.  
Local No. 27

AMERICAN NATIONAL  
INSURANCE  
COMPANY  
Galveston, Texas



# EXHIBIT "A"

	Hiring	6 Mos.	1 Year	2 Year	3 Year	4 Year	5 Year
Messenger .....	167.50	174.00	185.00				
Clerk A							
Stenographer A							
Telephone Operator .....	185.00	191.00	198.00				
Clerk B							
Stenographer B							
IBM Operator .....			210.00	223.00	230.00	240.00	250.00
Clerk C							
Stenographer C .....			260.00	270.00	280.00	290.00	300.00
Clerk D .....			310.00	320.00	330.00	340.00	350.00
Clerk E .....			360.00	370.00	380.00	390.00	400.00

GENERAL COUNSELS' EXHIBIT 10 BEING RESPOND-  
ENTS' LETTER JANUARY 17, 1949, ADDRESSED  
TO THE UNION.

Contract Negotiation Committee,  
of Office Employees International  
Union, Local No. 27, of the  
American Federation of Labor.

Attention of Mr. C. A. Stafford, Chairman.  
Dear Mr. Stafford:

We address this letter to you in our capacity as the Contract Negotiations Committee for the American National Insurance Company for the purpose of recording the present state of our negotiations in respect to a contract between your union and such company.

We have now had five sessions of negotiation with you, during which practically all aspects of the contract originally proposed to us by you have been discussed in an effort on both our parts to determine in just what respects we were apart and the extent and nature of our differences as to same.

In view of the fact that it now appears that we are approaching a deadlock, it seems advisable to state the company's position by means of this letter.

As we understand it, although there has been considerable discussion as to whether or not tentatively the union would recede from certain positions stated in its original draft of contract submitted to us, together with the addendum also submitted at a later date, the positions taken by the union in such original draft of contract and in such

addendum still stand without actual revision at this stage of negotiation, and accordingly, we shall reply to the positions stated in such original draft of contract presented and said addendum. Accordingly, you will consider this letter in connection with such two instruments.

The statement as to the intention and desire of both contracting parties contained in the second paragraph of the articles of agreement is satisfactory.

Article 1, headed "Recognition" is satisfactory.

Article 2, headed "bargaining": Section 1 of Article 2 is satisfactory except that the company suggests that the word "Receive" appearing in the second line of such paragraph should read "recognize."

The company is not agreeable to the proposal contained in Article 2, Section 2. As a counter-proposal, the company proposes that it will, pursuant to the provisions hereinafter contained, governing "grievances" provide for the handling on the company's part of such disputes or disagreements as to interpretation and administration under the contract, presented as grievances as shall arise during the term of the contract. This counter-proposal, however, is not to be construed as the taking of any position by the company that it will not discharge its duty to continue bargaining, as required by law.

As to Section 3, Article 2, this company is not willing to permit access to the company's buildings to the business representative of the union, it being the position of the company that such surveillance of the activities of the employees and the company during working hours as is required for the protection of the union's rights is to be

carried on by the stewards, who, in their turn, shall report such matters as are necessary to the business representative, who will, in his turn, take same up with such official of the company as shall be designated to receive and consider such matters. Therefore, as a counter-proposal, the company proposes that the business representative of the union shall have access only to the office of such representative of the company as shall be designated to receive him for the purpose of presenting grievances to such representative. It is, of course, agreed that the union will keep the company advised as to the identity of its business representative and that the company will keep the union advised as to the identity of the representative designated to discuss such matters with him.

As a counter-proposal, the company proposes that a paragraph covering "Function and Prerogative of Management" be inserted between Articles numbered 2 and 3 of the draft of contract submitted by the union. This Article tentatively to be numbered Article 2-A.

This Article should read as follows:

"Nothing in this agreement shall be deemed to limit or restrict the company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge or otherwise discipline an employee for violation of such rules or for other proper cause.

"The right to select and hire, to promote to a better position, to discharge, demote or discipline for cause, and

to maintain discipline and efficiency of employees and to determine the schedules of work is recognized by both union and company as the proper responsibility and prerogative of management to be held and exercised by the company, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the company in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration."

Article 3. "Discharge of Employees." As to Section 1 of Article 3 the company agrees that upon discharge of any employee upon demand from such employee, it will furnish to such employee a written statement as to the reason or reasons for discharge, and that such discharged employee may present as a grievance, under the machinery hereinafter provided, his dissatisfaction with such discharge.

Section 2 is agreeable to the company.

Article 4. The company is not agreeable to the proposal contained in Section 1 of Article 4. As a counter-proposal the company states that after the execution of such contract as may be finally agreed upon between company and union, it will furnish to union such list or other information in respect to its employees as may then be required by law.

Section 2. The company is not agreeable to the proposal set forth in Section 2 as to Seniority as written. As

a counter-proposal, the company suggests that seniority be cumulative beginning with the date of last employment with the company rather than first employment, and that the company's records in respect to such employment shall be conclusive.

As to Section 3, the company is not agreeable to the proposal as to "continuous service" contained therein. As a counter-proposal, the company proposes that "continuous service" shall be broken by the quitting or discharge of an employee.

Section 4. The company is not agreeable to the proposal contained in Section 4. As a counter-proposal, the company proposes that no employee of this company shall become entitled to any provision of this paragraph unless and until such employee shall have remained in the employment of the company for a period of 90 days from and after the last employment of such employee.

Article 5 headed "Promotion, Re-employment and Lay-offs." The company is not agreeable to the proposals set forth in Sections 1, 2, 3, 4 and 5 of Article 5. As a counter-proposal the company proposes that where the service record, physical fitness, application, ability to perform the duties of the higher position, skill and efficiency are relatively equal, the company will consider seniority as the controlling factor in the promotion of an employee to a better position, it being understood that any employee feeling himself aggrieved by the failure of the company to promote him, or the union, in his behalf, may present such dissatisfaction as a grievance under the grievance machinery hereinafter provided.

Article 6. The proposals set forth in Sections 1 and 2 of Article 6 are not agreeable to the company. As a counter-proposal the company proposes that the established work week shall consist of 40 hours of work and the company reserves to itself the right to establish such shifts and schedules of work and to discontinue same at such times as may be necessary to properly conduct the business of the company.

Article 7. "Wages." The company is not agreeable to the proposal set forth in Section 1 or to the Exhibit A entitled "Step-rate Schedule" referred to therein. As a counter-proposal the company proposes a wage schedule in accordance with the attached schedules furnished herewith entitled, "Anico Wage Promotion Plan."

The company is not agreeable to the proposal set forth in Section 2. As a counter-proposal, the company proposes that it will pay wages at the regular rate for work performed not in excess of 40 hours per week.

Section 3. The company is not agreeable to the proposal contained in Section 3. As a counter-proposal the company proposes that it will pay overtime such as may be required by the Wages and Hour Act. As a further counter-proposal, the company proposes that whenever overtime work shall become necessary in any department, it shall be first offered equally to the employees of such department, but the company reserves the right to put other employees of its own choosing on such work if, in the opinion of the company, such action becomes necessary.

Section 4. The company is not agreeable to the proposal as set forth in Section 4. As a counter-proposal the

company proposes that the following days be recognized as Holidays:

New Year's Day  
Fourth of July  
Labor Day  
Thanksgiving Day  
Christmas Day

and that the employees shall be paid for such days at the regular rate. In the event, however, any employee shall be required to work upon any of such days, the employee shall be paid at the rate of two times the regular rate for such work. As a further counter-proposal the company proposes that the following Monday after any of such listed days shall be observed as a Holiday only in the event such listed day falls on a Sunday.

The company is not agreeable to the proposal contained in Sections 4 and 5 (should be numbered 5 and 6). The company has no counter-proposal to make in respect to such sections, at this time.

Article 8, "Vacations and Leaves." The company is not agreeable to the proposals set forth in Sections numbered 1 and 2. As a counter-proposal, the company proposes a vacation schedule in accordance with the vacation schedule attached hereto.

The company is not agreeable to the proposal set forth in Section 3. As a counter-proposal the company proposes a provision as to Sick Leave in accordance with the attached schedule marked "Sick Leave."

The company is not agreeable to the proposal set forth in Section 4. As a counter-proposal the company proposes the following:

"Leave of Absence shall be understood to mean an absence from work without pay, requested by an employee and consented to by the company in advance, for an agreed period of time and for good cause. Any absence from work on the part of an employee without such prior agreement and consent of the company may, at the option of the company, be treated as a 'quitting' on the part of such employee."

The company is not agreeable to the proposal contained in Section 5. The company has no counter-proposal to offer at this time.

Article 9, headed "Miscellaneous." Section 1 is agreeable to the company.

The company is not agreeable to the proposal contained in Section 2.

As a counter-proposal the company proposes the following:

"Discrimination and Union Activity.

1. The company agrees that it will not interfere with, restrain or coerce employees because of membership or lawful activity in the union nor will it, by discrimination in respect to hire, tenure or employment or any term or condition of employment, attempt to discourage membership in the union.

2. The union agrees that neither the union nor its members will intimidate or coerce the employee in respect to his right to work in respect to union activity or membership, and further that there shall be no solicitation

of employees for union membership or dues on company time. The union shall not discriminate in any way as to the admission to or membership in the union, or otherwise, against any persons who are now, or hereafter may be employed, or be restored to or reinstated in employment by the company.

Article 10, headed "Military Service." The proposal contained in Article 10 is agreeable in principle to the company on the understanding that it is a correct statement of the law governing the subject, it being known as between all parties, that whatever is provided by applicable law shall govern in this respect.

Article 11. The company is not agreeable to the proposal set forth in Article 11, and has no counter-proposal in respect to this matter to present at this time.

Article 12. The company is agreeable to the proposal set forth in Article 12.

Article 13. The company is not agreeable to the proposal set forth in Article 13. As a counter-proposal the company proposes an article on "Grievances" as follows:

#### "Discussion of request or complaint

1. Any employee who believes that he has a justifiable request or complaint shall discuss the request or complaint with the Supervisor in an attempt to settle it.

#### Definition of Grievance

2. 'Grievance' as used in this agreement is limited to a complaint which has not been settled as a result of the dis-

cussion required in section 1 hereof and which involves the interpretation or application of, or compliance with, the provisions of this agreement.

### Grievance Procedure

3. (a) A grievance which has not been settled within 5 days as a result of the discussion required in section 1 hereof, to be considered further must be filed promptly in writing with the employee's Supervisor, stating fully the nature of the grievance and the grounds for complaint or dissatisfaction. The Supervisor shall answer the grievance within 10 days from date of presentation in writing, signing and dating his reply and returning one copy thereof to the employee or the steward.

If the Supervisor's decision is not appealed within 10 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

(b) In order for a grievance to be considered further, it shall be appealed in writing to the Department Manager within 10 days from the date of the Supervisor's written reply. An appealed grievance shall be discussed in an attempt of settlement at a mutually convenient time between the steward or employee and the Department Manager and answered within 10 days from appeal. The Department Manager's decision in writing after signing and dating it shall be given to the steward or employee. If the Department Manager's decision is not appealed within 10 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

(c) In order for a grievance to be considered further, written notice of appeal by the Business Representative of the union shall be served to the company's Secretary, or his delegated representative, within 10 days of the date of the Manager's written decision. Discussion of the appealed grievance shall take place at the earliest date of mutual convenience following receipt of the notice of appeal.

Grievances discussed in such meetings shall be answered in writing by the representative of the company within 15 days after the date of such meeting; unless by mutual agreement a different date for disposition is agreed upon.

Whenever either party concludes that further meetings can not contribute to the settlement of the grievance, the dissatisfied party may, by written notice within thirty (30) days from the date of the written decision of the last previous meeting, appeal the grievance to arbitration, provided the grievance is subject to review by arbitration under the terms of this contract.

4. If either party shall elect to submit a grievance to arbitration, it shall give written notice to the other party of intention to arbitrate. Such notice shall contain a statement specifying the grievance. Upon receipt of any such notice the parties shall, at the earliest date of mutual convenience, confer in an effort to select by mutual consent, an impartial board of arbitration.

The board of arbitration shall consist of one arbitrator appointed by the union and another by the company and a third appointed by the first two arbitrators. In the event that the first two arbitrators are unable to agree on the appointment of the third arbitrator shall be appointed by

the Senior District Judge of the United States District Court for the Southern District of Texas.

The expense incident to the appointment and services of the third arbitrator shall be borne equally by the union and the company.

5. Nothing in this Article shall be construed to deprive any individual employee or group of employees of their right at any time to present grievances to the company or to have such grievances adjusted without the intervention of the union, as long as the adjustment shall not be inconsistent with the terms of this contract, and provided the union is given notice and opportunity to be present at such adjustment."

Article 14. The company is agreeable to article 14, suggesting, however, that the wording should be changed to read as follows:

"Applicable executive orders and other orders of duly constituted authorities, etc."

Article 15. The company is agreeable to Article 15 as submitted insofar as such article presently goes. The company calls attention to the fact that the initial term of the contract is not stated in such article and suggests that the proper initial term should be two years from date of execution.

As to the various additional proposals submitted by the union to the company in its "Memorandum of Agreement" dated December 15, 1948, presented in connection with the "Step-rate Schedule and Regulations" it is the company's position that most of such proposals have been fully met

by the foregoing counter-propositions and statements of position made in this letter. In the event, however, that further discussion of the matter develops a necessity for the company's making a written reply to these matters, such written reply will be furnished.

Yours very truly,

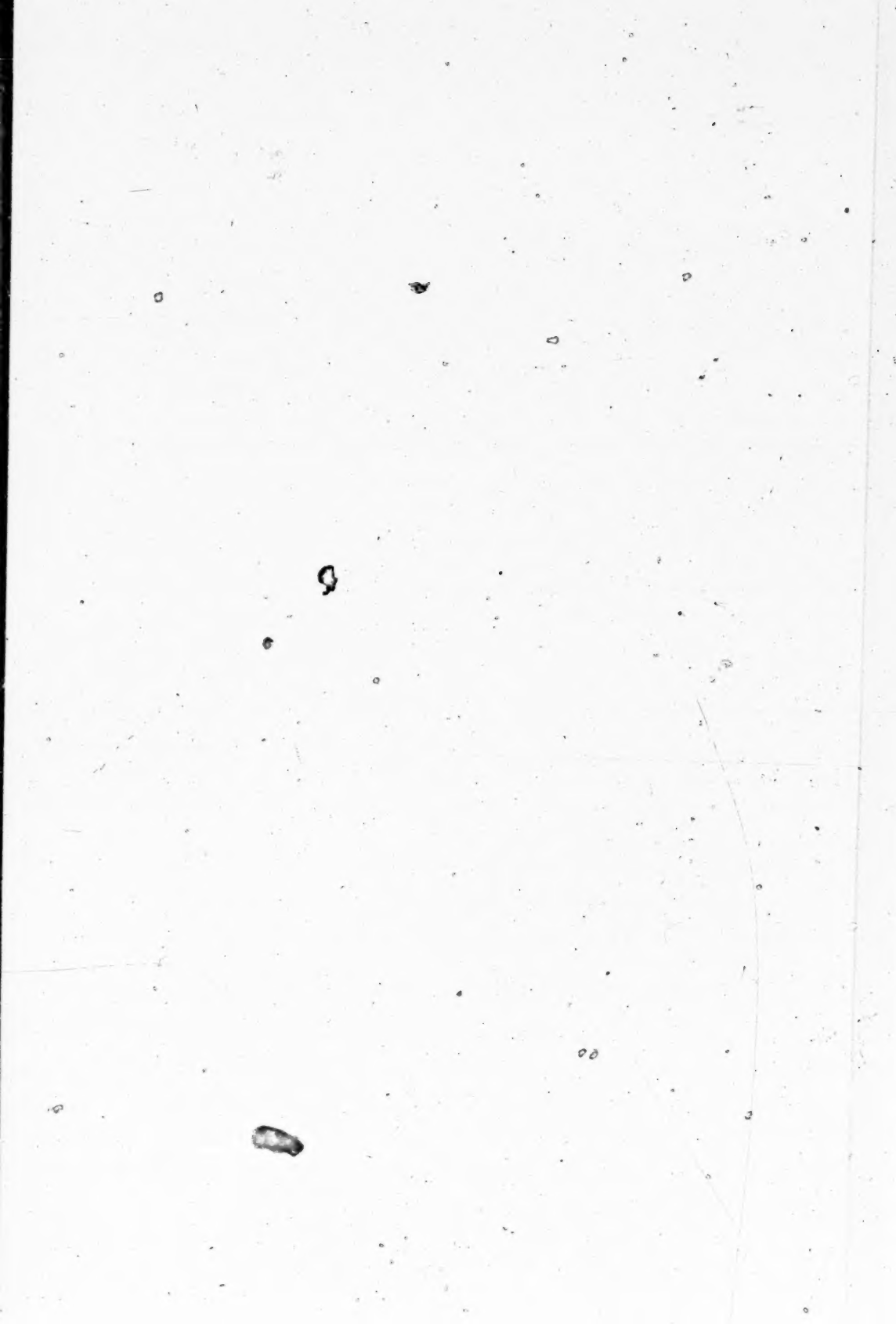
Contract Negotiations Committee of  
the American National Insurance  
Company

By: LOUIS J. DIBRELL,  
Chairman

LJD:B

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# ANICO WAGE PROMOTION PLAN

Class	Starting Salary	6 Mos	12 Mos	18 Mos	2 Yrs	2 1/2 Yrs	3 Yrs	3 1/2 Yrs	4 Yrs	4 1/2 Yrs	5 Yrs	6 Yrs	7 Yrs	8 Yrs	9 Yrs	10 Yrs
A	\$ 85	\$ 90	\$ 95	\$	\$100	\$	\$105	\$	\$110							
B	95	100	105	110	115	120	125		130							
C	105	110	115	120	125	130	135	140	145		150					
D	125	130	135	140	145	150	155	160	165	170	175	Salaries above \$175 to \$200 subject to special handling.				
E	150	155	160	165	170	175	180	185	190	195	200	Salaries above \$200 to \$250 subject to special handling.				

77

Increase Upon Promotion to Next Higher Job Classification

From A to B—after 6 months on A	\$ 5.00
From B to C—after 6 months on B	5.00
From C to D—after 12 months on C	10.00
From D to E—after 18 months on D	15.00

## VACATION SCHEDULE

If date of last employment is	Number of Vacation days allowed in 1949	Vacation Schedule For the Year 1949 Vacation not earned and allowed before
Dec. 1948	5	Nov. 1949
Nov. "	5	Oct. "
Oct. "	5	Sept. "
Sept. "	5	Aug. "
Aug. "	5	July "
July "	5	June "
June "	5	May "
May "	5	Apr. "
Apr. "	5	Mar. "
Mar. "	5	Feb. "
Feb. "	5	No restrictions
Jan. "	5	" "
Dec. 1947	10	1st Week any time in 1949 2nd Week not before
Nov. "	10	Nov. 1949
Oct. "	10	Oct. "
Sept. "	10	Sept. "
Aug. "	10	Aug. "
July "	10	July "
June "	10	June "
May "	10	May "
Apr. "	10	Apr. "
Mar. "	10	Mar. "
Feb. "	10	Feb. "
Jan. "	10	No restrictions
or before	10	" "

Vacations cannot be accumulated from year to year.

If vacation falls on a holiday that is observed by the company, an additional day of vacation time is allowed; this additional day, however, must be taken during the same vacation period.

Vacations must be taken in periods of not less than five (5) consecutive days.

#### Paid Sick Leave Schedule

An employee of the company, who becomes ill and is unable to work and makes proper report of his illness to the company will, upon approval by the company, receive sick leave with pay as follows:

During first three months of service—No paid sick leave.

During remaining nine months of first year of service—5 days.

Each Year thereafter—10 days.

The company retains the right to determine the allowance or disallowance of sick leave and it retains the right to require a medical certificate to prove either ability or inability to work.

GENERAL COUNSELS EX. 11—RESPONDENT'S  
LETTER JANUARY 19 1949 TO UNION

January 19th, 1949

Contract Negotiation Committees,  
of Office Employees International  
Union, Local No. 27, of the  
American Federation of Labor.  
Attention of Mr. C. A. Stafford, Chairman

Dear Mr. Stafford:

At this stage of our negotiations at 5:30 p. m. on Wednesday, January 19th, 1949, you have stated to us that in your opinion we are deadlocked upon our contract negotiations and that in view of such deadlock you do not see where further negotiation meetings would serve any useful purpose.

Please be advised that the Company suggests and requests at this time an adjournment of this negotiation meeting until 2:00 p. m., February 7th, 1949 to be resumed at this same meeting place.

Yours very truly

Contract Negotiations Committee of  
the American National Insurance  
Company

By: .....

Chairman

LJD:M

GENERAL COUNSEL EX 12—RESPONDENTS LETTER  
FEB. 7 1949 TO UNION

February 7, 1949

Contract Negotiation Committee  
of Office Employees International  
Union, Local No. 27, of the  
American Federation of Labor

Attention of Mr. C. A. Stafford, Chairman

Dear Mr. Stafford:

We have met again today pursuant to our request of January 19th, 1948.

It appears that our respective positions is the same today as it was at the time of our adjournment on January 19th, in that neither the Union nor the Company is willing at this time to recede from their position as previously stated.

We appear to have reached an impasse.

You are advised that the Company stands ready to meet with you at such reasonable times as you might request for further negotiations.

We would request that you advise us in writing when you desire to meet again.

Yours very truly,

Contract Negotiations Committee of  
the American National Insurance  
Company

By: .....  
Chairman

GENERAL COUNSEL EX 13—UNIONS LETTER OF  
FEB. 7, 1949, TO RESPONDENT.

Office Employees International Union

1221 G Street N. W.

Washington 5, D. C.

February 7, 1949

Contract Negotiations Committee  
of the American National Insurance  
Company.

Attention of Mr. Louis J. Dibrell, Chairman

Dear Mr. Dibrell:

In reply to the letter of Feb. 7 handed me at the conclusion of our meeting on that date, please be advised this union will meet with the company any time at their convenience.

May we suggest that we meet at 10:00 a. m., February 9th, 1949 in the usual meeting place.

Yours very truly,

Contract Negotiation Committee of  
Office Employees International  
Union, Local No. 27, of the  
American Federation of Labor

By: C. A. STAFFORD,  
Vice President

GENERAL COUNSELS EX 14--RESPONDENTS LETTER  
FEB. 17, 1949, TO UNION.

February 17, 1949

Contract Negotiation Committee  
of Office Employees International  
Union, Local No. 27, of the  
American Federation of Labor.

Attention of Mr. C. A. Stafford, Chairman.

Dear Mr. Stafford:

Pursuant to the understanding we had with you at the close of our last negotiation meeting on Monday, February 7th, we hereby request that we have another meeting for further contract negotiations between your committee and ourselves on Wednesday, the 23rd day of February, 1949, at 2:00 o'clock P.M., here in our office where all previous meetings have been held.

Yours very truly,

Contract Negotiations Committee of  
the American National Insurance  
Company

By: LOUIS J. DIBRELL  
Chairman

LJD:B

cc: Mr. John Thomas  
Regional Office, NLRB,  
1101 T & P Building,  
Fort Worth, Texas.

Mr. A. G. Wilson  
1115 1/2 Strand,  
Galveston, Texas

GENERAL COUNSELS EX 15—UNIONS LETTER OF  
FEB. 19, 1949, TO RESPONDENT.

Port Arthur, Texas

February 19, 1949.

Mr. Louis J. Dibrell, Chairman,  
American National Insurance Company,  
Negotiating Committee,  
Galveston, Texas.

Dear Mr. Dibrell:

In reply to your request of February 17, I wish to advise the Union's Negotiating Committee will meet in your office on Wednesday, February 23, 1949, at 2:00 P.M. for the purpose of continuing our negotiations.

Yours very truly,

C. A. STAFFORD

(C. A. Stafford).

cc: Mr. John Thomas  
Regional Office NLRB  
1101 T&P Building,  
Ft. Worth, Texas.

Mr. A. G. Wilson,  
1115½ Strand,  
Galveston, Texas.

GENERAL COUNSELS EX 16 UNIONS LETTER  
JANUARY 19, 1949 TO RESPONDENT.

625 Bond Building

Port Arthur, Texas,

January 31, 1949.

American National Insurance Co.,  
Galveston, Texas.

Attn. Mr. Louis J. Dibrell:

Dear Mr. Dibrell:

With reference to the letter handed me at the conclusion of our meeting of January 19, and as indicated by myself, as Chairman of the Union's Negotiating Committee, this union thru its committee will meet with your negotiating committee as often as is necessary to reach a satisfactory agreement between this organization and the American National Insurance Company.

Therefor, in accordance with your request, we will meet with you at 2:00 P.M. February 7, 1949, at the usual meeting place in the American National Insurance Company's offices.

Yours very truly,  
C. A. STAFFORD,  
Intn. Vice-Pres.

via Registered Mail

Return Receipt requested.

GENERAL COUNSELS' EX 19—RESPONDENTS LETTER JULY 8, 1949 TO MESSRS. MULLINAX, WELLS & BALL.

July 8, 1949.

Messrs. Mullinax, Wells & Ball,  
Attorneys at Law,  
1716 Jackson Street,  
Dallas, Texas.

Attention of Mr. Nile E. Ball.

Re: Contract Negotiations Between Office Employees International Union, Local 27 and American National Insurance Company.

Dear Mr. Ball:

Enclosed please find a payroll list of employees of the American National Insurance Company coming within the unit represented by the union, which shows the names of the employees, the date upon which they first entered upon their service with the American National Insurance Company, their job classification, the date upon which they were assigned to their present job classification, and the monthly salary paid each as of such payroll date. Also we enclose photostatic copies of the pages from the Annual Statement of the American National Insurance Company for the year 1948 required by law to be filed with the Insurance Commissioner of the State of Texas, which pages show the income and the disbursements of the company for the year 1948.

We trust that the enclosures are sufficient to meet the requests made by you in your letters of June 13 and June 22.

We shall be pleased to again meet with your committee for further negotiations in an effort to reach a contract

between the union you represent and this company, at your convenience except that it will be impossible for the writer to be present at such meeting on either Saturday, July 16th, or Monday, July 18th.

We also wish to advise that we have a case set for trial before a jury following the completion of the capital docket in the Tenth District Court which opens on Monday, July 18th. It is the writer's personal opinion that this case will be reached probably on Wednesday, July 20th, and should be concluded in not to exceed two days.

In view of the fact that the hearing before Trial Examiner on the complaint which Mr. Wilson in behalf of the union filed against this company has been set for Tuesday, July 26th, and in view of the further fact that you stated to us in your letter of June 13th, "The union hopes that the company will change its attitude and that a mutually beneficial and acceptable contract will be agreed to prior to July 26th", we urge that you avail yourselves of the opportunity for further negotiations prior to such date.

Yours very truly,

DIBRELL, DIBRELL & GREER

By:

LJD:B

cc: Mr. A. G. Wilson

1115½ Strand

Galveston, Texas

Mr. C. A. Stafford

2070 Rosedale Drive

Port Arthur, Texas

Mr. E. Don Wilson

National Labor Relations Board

1101 T & P Building

Fort Worth, Texas

GENERAL COUNSELS, EX 20—RESPONDENTS  
LETTER OF MARCH 3, 1949, TO UNION.

March 3, 1949

Contract Negotiation Committee of  
Office Employees International Union,  
Local No. 27, American Federation of Labor.

Attention of Mr. C. A. Stafford, Chairman.

Dear Mr. Stafford:

We acknowledge receipt of your letter dated February 26, 1949, received in our office on Monday, February 28, 1949, copy of which is shown to have been mailed to Mr. John Thomas, Field Examiner of the National Labor Relations Board.

At the outset, we wish first to advise that your said letter and various statements contained therein are, in our opinion, designed and intended for the sole purpose of bolstering the charge against the American National Insurance Company filed by Mr. Wilson with the National Labor Relations Board under date of January 28, 1949, which alleged, amongst other things, that on and after January 10, 1949, said company had refused to bargain collectively with your union for a contract. We make this statement because your said letter is replete with misstatements of fact and wholly self-serving declarations and conclusions to your own interest.

It was not until during our meeting of February 24, 1949 when you read to us parts of the letter quoted in your letter above mentioned that there was any intimation

that there was any conflict between us as to what had transpired or what had been said at our previous meetings. In fact, up until such time, you had seen fit to compliment us on the fact that the negotiations had been in good faith. Upon realizing that it had apparently now become your purpose to distort the true story of these negotiations, we immediately advised you, and now again advise you, that in the event you desire a record kept of our negotiation meetings, a public stenographer should be secured for such purpose, and we stand ready to pay  $\frac{1}{2}$  the cost of such reporting.

You state, "The company's representatives have stated on numerous occasions during our negotiations that the company would not proceed with bargaining on wage rates, hours of work, vacations, sick leave, etc., without first obtaining agreement from the union to include Article 2A as proposed by the company in its entirety without modification." In fact, the company has made you definite, concrete counter-proposals in its letter to you of January 17th on each and all of such conditions and we have, at each and all of our negotiation meetings, discussed, bargained and attempted to negotiate such conditions with you to the fullest extent which you and your committee were willing to go and at each and all such meetings the only occurrence that has limited negotiations on such conditions was your statement that you would not agree to any contract unless and until the company would recede from the position taken by it in Article designated 2A in our said letter of January 17th. In fact, to use your own language, you stated that you would not sign a contract containing Article 2A or its substance in any language, even if the company agreed to pay each employee \$500.00 a month, or as you put it at another time, before

you would sign such a contract, you would request decertification.

Please be advised that we stand ready to discuss wages, rates of pay, hours of work, vacation, sick leaves and all other conditions of employment with you now and at any time in the future you may desire to resume such discussions. We have not said to you in the past, and we do not now say to you, that we will accede to your demands in respect to any of these conditions, but we do stand ready to continue negotiations which have, in our opinion, not only been in good faith, but have been productive.

In respect to your statement that you attempted in our last meeting of February 24th to discuss the provisions contained in the letter quoted by you in your letter of February 26, which you say you submitted to us verbally, please be advised that the true fact is that you stated in such meeting that prior to your receipt of our letter of February 17th requesting additional meeting, you had written a letter addressed to us which was to have been sent, but was not sent by you because of the change in the status of the situation resulting from our request for such additional meeting. And further, because you had been advised that the sending of such letter was the proper thing to do—by whom you did not state: You further stated in connection with such remarks that it was your opinion that the sending of the letter in question by you to us was a useless thing, as you felt that we were hopelessly deadlocked. You further stated that you were not prepared at such meeting of February 24th to submit to us such letter, but that you would instead read to us parts thereof stating that you were not reading to us all of said letter, and that as said letter was to be reframed

and sent to us in its changed condition with the deletion of certain parts theretofore included therein, you were at such meeting prepared only to discuss those parts of it with us as you saw fit. As a matter of fact, although in our opinion we were under no obligation to discuss with you a letter which we had not received, and as to the entire contents of which we were unaware, we did, nevertheless, undertake to discuss with you, and did discuss with you, at length, the various provisions of same which are now quoted by you in your letter of February 26th.

As to paragraph 1 on page 2 of your letter, we stated to you in such meeting and we say to you now that the company stands ready to negotiate with you, as a part of a contract to be entered into with the company, working rules if in fact you are not satisfied with the rules which this company has had in effect since long prior to the certification of your union as exclusive bargaining agency.

Paragraph numbered 2 appearing on page 2 of your said letter, appears to us to be in direct conflict with the provisions proposed by the company in Article 2A of its letter of January 17th to you and has therefore already been rejected.

Paragraph numbered 3 on page 2 of your letter appears to us to be a return by you to the concept of seniority as governing wage rates originally proposed by you in your addendum of December 15, 1948, which was rejected in our letter to you of December 17, 1948, and to which we made a counter-proposal headed "American National Insurance Company Wage Promotion Plan" attached to said letter.

It further appears to us that paragraph numbered 4 on page 2 of your said letter is simply a further ramification of your originally proposed premise that seniority alone will govern promotions, demotions and lay-offs which premise has likewise been rejected by the company.

Thus it appears to us that your four conditions constitute nothing more nor less than a continuation on your part in somewhat different words of the proposition repeatedly and emphatically stated to us by you in our various negotiations that your union will not, under any circumstances, sign any contract with this company which contains either paragraph 2A as proposed to you by us or the essence thereof.

Please bear in mind that at our first negotiation meeting following receipt by us of a copy of the Charge which Mr. Wilson had filed before the Board against the American National when we asked you what the reason was for your filing the Charge consisting in part of the allegation that the company was refusing to bargain collectively with you, you stated to us that the reason for filing such Charge was "to make the company get in line." It is very apparent that it is your opinion that the National Labor Relations Board has the power and authority under the Act to require this company to recede from its position that its top management officials should be entitled to make final and binding decisions as to matters set forth in said proposal and to accede to the union's demand that such questions be determined by outside arbitration. While this company stands ready to negotiate with you, it does not agree that such is the law.

In short, it is the position of this company that if, in fact, a dead-lock presently exists between the company

and the union, in these contract negotiations, and that therefore as stated by you in your letter, "the time spent in such meeting would be lost by both parties", this is a situation of your making, not the company's.

We, therefore, suggest to you that upon reasonable notification, in writing, from you to the company of your desire to resume negotiations in respect to this contract, such negotiations will be resumed by the company at a time agreeable to you. If, in view of this letter, you desire to meet with us on either March 10th or March 11th, please advise.

Yours very truly,

LOUIS J. DIBRELL

Chairman

Contract Negotiations Committee  
of American National Insurance  
Company.

LJD:B

cc: Mr. John Thomas,  
Field Examiner,

NLRB,

T. & P Building,

Fort Worth, Texas.

Mr. A. G. Wilson,

1115 1/2 Strand,

Galveston, Texas.

GENERAL COUNSELS' EX 23—UNION'S LETTER OF  
MARCH 7, 1949, TO RESPONDENT.

March 7, 1949

Contract Negotiations Committee  
American National Insurance Company  
Galveston, Texas

Attention: Mr. Louis J. Dibrell

Gentlemen:

This is to acknowledge receipt of your letter of March 3 and to advise that we will be happy to meet with you March 10 at 10 A. M. in your office in Galveston unless we advise you otherwise.

By asking for this meeting, this is not to be construed as recognizing that you are bargaining in good faith with the union, but is another attempt on the part of the union to bargain a contract mutually agreeable to both company and union.

Yours very truly,  
C. A. STAFFORD

cc: Mr. John Thomas  
Field Examiner, NLRB  
1101 T & P Building  
Fort Worth, Texas  
Mr. A. G. Wilson  
1145 1/2 Strand,  
Galveston, Texas

GENERAL COUNSELS' EX 24—RESPONDENTS'  
LETTER OF APRIL 1, 1949, TO UNION.

April 1, 1949

Hon. C. A. Stafford,  
Office Employees International  
Union; A. F. of L.,  
2070 Rosedale Drive,  
Port Arthur, Texas.

Dear Mr. Stafford:

In accordance with the understanding reached between us at our last contract negotiation meeting held in our office March 11, 1949, we hand you herewith one copy of "Rules and Practices Governing Employees of the Home Office of American National Insurance Company, Galveston, Texas."

Two copies of these Rules and Practices, together with a copy of this letter, are being today mailed to Mr. A. G. Wilson, 1115½ Strand, Galveston, Texas.

It is our understanding that after you have given such study to the enclosed Rules and Practices as you may wish, you are to contact us for the purpose of arranging further contract negotiation meetings. We ask that you give us as much advance notice as to when you desire to resume such contract negotiations as possible, in order that we may arrange our commitments.

Yours very truly,

DIBRELL, DIBRELL & GREER

By: LOUIS J. DIBRELL

LJD:B

Enclosure:

cc: Mr. A. G. Wilson

1115½ Strand,

Galveston

Mr. John Thomas

Field Examiner, N.L.R.B.

T & P Building

Fort Worth, Texas

GENERAL COUNSELS' EX 26—MESSRS. MULLINAX  
WELLS & BALL'S LETTER OF JUNE 22, 1949, TO  
RESPONDENTS.

June 22, 1949

Mr. Louis Dibrell

Dibrell, Dibrell and Greer

Attorneys at Law

903 Medical Arts Building

Galveston, Texas

Re: Contract negotiations between Office Employees Inter-  
national Union, Local No. 27, and American National  
Insurance Company.

Dear Mr. Dibrell:

This is to acknowledge receipt of your letter of June 14th, in which you furnished us with information which we had requested re the above matter. We appreciate your prompt attention, however, you provided us with the employees' code numbers rather than the names of the employees.

This is to request that you furnish the roster of employees together with their code numbers so that we may have the basis to check seniority classifications as listed by the company. Otherwise, the seniority information furnished by the company is of no value.

Your attention in this will be greatly appreciated. With best personal regards.

Yours very truly,

MULLINAX, WELLS AND BALL

By

NEB:PCB

GENERAL COUNSELS' EX 27—MESSRS. MULLINAX  
WELLS & BALL'S LETTER OF JUNE 13, 1949, TO  
RESPONDENT.

June 13, 1949

Mr. Louis Dibrell  
Dibrell, Dibrell and Greer  
Attorneys at Law  
903 Medical Arts Bldg.  
Galveston, Texas

Re: Contract negotiations between Office Employees International Union, Local No. 27, and American National Insurance Company.

Dear Mr. Dibrell:

This is to request a copy of the American National Insurance Company's statement of income and expenses for its last fiscal year. The purpose of this request is so that the Union may have the necessary information on which it may reach an intelligent opinion as to the reasonableness of its demand for a general wage increase.

As stated to you in our telephone conversation of June 10, the information set forth in the Company's report to its policy holders, which you provided to us, is not sufficiently detailed to serve our need as above outlined.

As you have now been informed, the Union has filed charges with the National Labor Relations Board against the Company for failure to bargain in good faith, and a hearing date has been set on July 26 on these charges and others. The Union has reluctantly taken this action, be-

cause it does not desire to involve the Company in litigation, but rather it desires to reach a fair contract with the company in behalf of the Company's employees whom it represents. The Union hopes that the Company will change its attitude and that a mutually beneficial and acceptable contract will be agreed to prior to July 26.

With best personal regards.

Very truly yours,

MULLINAX, WELLS AND BALL

By

NEB:SM

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GENERAL COUNSELS' EX 28—MESSRS. MULLINAX  
WELLS & BALL'S LETTER OF JUNE 1, 1949, TO  
RESPONDENT.

June 1, 1949

Mr. Louis Dibrell  
Dibrell, Dibrell & Greer  
Attorneys at Law  
903 Medical Arts Bldg.  
Galveston, Texas

Re: Contract negotiations between Office Employees International Union, Local No. 27 and American National Insurance Company

Dear Mr. Dibrell:

This is to follow up my verbal requests made during our negotiating session of May 30, 1949. You will please furnish me the following information.

(1) A roster of all employees within the bargaining unit as of June 1, 1949, such roster to contain the following information:

- (a) Date of last employment
- (b) Salary
- (c) Job Classification
- (d) Date of such employee commenced working in such job classification, for purpose of determining seniority in job promotion.

(2) Schedule of job classifications together with wage bracket of each, within the bargaining unit.

(3) Description of objective standards which the company uses for the purpose of determining qualifications of an employee and promotion, and the weight given to these tests or standards.

Will you please tell us who makes the recommendations for promotion and by whom is the promotion confirmed.

Your attention in this will be greatly appreciated.

Very truly yours,  
MULLINAX, WELLS AND BALL  
By

NEB:PCB

Air Mail

Registered Mail

GENERAL COUNSELS' EX 29—RESPONDENTS' LETTER OF JUNE 14, 1949, TO MESSRS. MULLINAX, WELLS & BALL.

June 14, 1949 .

Mr. Nile E. Ball,  
Messrs. Mullinax, Wells & Ball,  
Attorneys at Law,  
1716 Jackson Street,  
Dallas, 1, Texas.

Re: Contract Negotiations between Office Employees International Union, Local No. 27 and American National Insurance Company.

Dear Mr. Ball:

We hand you herewith the information requested in your letter of June 1st.

Mr. Louis Dibrell is out of the office today, but as he told you over the telephone the other day, the reason that this information has not been furnished to you sooner is because Mr. Mosele was out of the office on account of illness for a few days last week.

You will observe that the roster furnished is as of May 27 instead of June 1 as you requested. The reason for this is that May 27 was the nearest date to June 1 for which the information is available.

Yours very truly,

DIBRELL, DIBRELL & GREER

By: CGD

CGD:B

cc: Mr. L. Mosele

GENERAL COUNSELS' EX 32-UNIONS LETTER  
FEB 26 1949.

2070 Rosedale Drive,  
Port Arthur, Texas.

February 26, 1949.

Air Mail Special Delivery

Registered Mail

Return Receipt Requested

Contract Negotiation Committee,  
American National Insurance Company,  
Galveston, Texas.

Attention of Mr. Louis J. Dibrell, Chairman.

Dear Mr. Dibrell:

As stated to you in our meeting of February 24, 1949, we wrote you the following letter which was not mailed due to the fact we received your letter of February 17, 1949, suggesting another meeting be held on February 23, 1949. This letter was read to you during our meeting of February 24 and is as follows:

"We address this letter to you in further reply to your letters of January 17 and February 7, in another attempt to meet the company's objections to our proposed Articles of Agreement handed to you in meetings of November 30 and December 15, 1948. Using your letter of January 17 as an outline of our differences, we make the following comments:

"It is our understanding that the title through Article II Section 1, of the Union's proposed contract is agreeable to both company and union.

"It is the Union's understanding from statements made by Company's representatives during our negotiations that

Section 2, Article I<sub>1</sub> is not agreeable to the Company and that the Company will go no further than to agree to provide for the handling of grievances as to interpretation and administration of the contract as required by law. The Union believes that Section 2, as proposed, furnishes a method by which the Company and Union will meet at stated intervals to discuss and agree on matters of interpretation and administration of the contract without it being necessary to handle any or all matters thru a grievance procedure and arbitration board. The Union is agreeable to delete Section 3 from the contract provided the Company will agree to Section 2 of this Article II in its entirety as proposed.

"Inasmuch as the Company's representatives have stated on numerous occasions during our negotiations, the Company would not proceed with bargaining on wage rates, hours of work, vacations, sick leaves, etc., without first obtaining agreement from the Union to include Article 2-A as proposed by the Company in its entirety without modification, the Union wishes to advise it will agree to Article 2A with modifications or amendments providing as follows:

1. "The Company and Union agrees to certain working rules, the violation of which will constitute sufficient reason for immediate discharge or disciplinary measures and which will be the Company's sole prerogative to administer. These working rules to be mutually agreed to by Company and Union and will become a part of this contract. These rules to be modified or amended at any time during the life of the contract by mutual consent of the parties.

2. "Provision is made to arbitrate cases wherein employe or employes discharged or disciplined under the

working rules, as provided for above under (1), wherein arbitrator will rule only on whether or not employee or employees committed or did not commit acts for which he or they are being discharged or disciplined.

3. "The Company agrees to a wage schedule providing for 'Length of Service Only' will determine employees wage rate.

4. "Seniority provisions will be reduced to one paragraph providing that employees will be laid off during reduction in forces in reverse order to their last hiring date; that is, last employee hired will be first laid off, etc.

"It is the Union's feeling if the Company will agree to the above four (4) conditions, collective bargaining can be started on the proposed agreement and a complete deadlock in negotiations will be averted."

Inasmuch as the Company has steadfastly refused to bargain in regard to hours of work, rates of pay, vacation plans, sick leaves, leaves of absence and other conditions of employment, it is impossible to comment on these items at this time.

As stated in our meeting of February 24th, this letter was written before we had received your letter of February 17 in order to start negotiations with the Company. Your letter of the 17th was received before we had time to mail our letter, and after the receipt of your letter the Union decided it would be better to discuss the above with the Company verbally instead of trying to handle the matters by letter. The Union was disappointed with the results of these discussions in our meeting of February 24 as the Company representatives refused to discuss any of the above provisions until they had received a formal letter covering them.

As the Company maintains the position that: (1) Article 2-A, as proposed in their letter of January 17, 1949, must be agreed to in its entirety, without change or modification; (2) the Company will not agree to any revision, modification, or extension, to their present wage schedule, sick leave plan, vacation plan, leaves of absence plan, or agree to any other clause without first having received an agreement from the Union to include Article 2-A in the Agreement, as Article 2-A, to use the words of yourself as Chairman of the Company's committee, "is the meat of the contract", the Union can see no reason or justification for further meetings with the Company and considers the negotiations between Company and Union deadlocked, and, therefore, wishes to cancel the meeting now scheduled for March 2, 1949, as it feels the time spent in such a meeting would be lost by both parties.

If the Company feels it can offer any counter-proposal, or proposal, by which the present deadlock may be broken and negotiations started on a contract, and will so advise the Union in writing, the Union is willing to meet with the Company on the first date suggested by Company at the end of our last meeting of February 24; namely March 10 or 11, 1949, in a further effort to negotiate a contract.

Yours very truly,

C. A. STAFFORD

(C. A. Stafford),

Chairman, Union Committee.

cc: Mr. John Thomas, Field Examiner,  
National Labor Relations Board,  
T&P Building,  
Ft. Worth, Texas.

Mr. A. G. Wilson, (2)

1115½ Strand,

Galveston, Texas.

GENERAL COUNSELS' EX 33. UNION'S LETTER OF  
MAY 12 1949 TO RESPONDENT.

May 12, 1949

Mr. Louis J. Dibrell

Chairman

Negotiating Committee

American National Insurance Company  
Galveston, Texas.

Dear Mr. Dibrell:

Confirming our telephone conversation of today, the union committee will meet with you again on Thursday, May 19, at 10:00 a.m., in your offices in Galveston, to resume negotiations on our contract.

Thank you very much for the courtesy shown in changing this date from Monday, May 16, to Thursday, May 19.

Very truly yours,

C. A. STAFFORD

(C. A. Stafford)

Vice-President

CAS:SM

cc Mr. A. G. Wilson

1115½ Strand

Galveston, Texas,

Mr. John Thomas

Field Examiner

National Labor Relations Board

T and P Building,

Fort Worth, Texas.

GENERAL COUNSELS' EX 34, BEING THE UNION'S  
SECOND COMPLETE CONTRACT PROPOSAL,  
WHICH IS THE SO-CALLED "BALL" CONTRACT.

Articles of Agreement  
Between

The American National Insurance Company  
and  
Office Employees International Union, Local Number 27  
of the  
American Federation of Labor

This agreement is made by and between the American National Insurance Company, hereinafter referred to as the Company, and the Office Employees International Union, Local No. 27, hereinafter referred to as the Union.

The contracting parties desire that a maximum of well-being, contentment, and good will should result from the friendly deliberation on and fair disposition of all problems arising in the management-employee relationship.

Article I

Recognition

The Company recognizes the Union as the sole collective bargaining representative for all employees in the Home Office of the Company at Galveston, Texas, but excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads and all other supervisors as defined in the Labor-Management Act.

## Article II

## Bargaining

Section 1: The Company, through its appointed representatives, will recognize the bona fide representatives of Office Employees International Union, Local No. 27, as the exclusive representative of all the said employees at its Home Office in Galveston, Texas, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Section 2: The Company will, pursuant to the provisions hereinafter contained, governing "grievances" provide for the handling on the Company's part of such disputes or disagreements as to interpretation and administration under the contract presented as grievances, as shall arise during the term of the contract.

Section 3: The business representative of the Union shall have access to the office of such representatives of the Company as shall be designated to receive him for the purpose of presenting grievances to such representative. It is, of course, agreed that the Union will keep the Company advised as to the identity of its business representative and that the Company will keep the Union advised as to the identity of the Company representative designated to discuss such matters with him.

## Article II-A

## Functions and Prerogatives of Management

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right

to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

The right to select and hire, to promote to a better position, to discharge, demote or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the management in a fair and just manner, (and subject to the terms of the agreement), and it is agreed that an employee, feeling himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth.

### Article III

#### Discharge of Employees

Section 1: The company agrees that upon discharge of any employee, upon demand from such employee, it will furnish to such employee a written statement as to the reason or reasons for discharge, and that such discharged employee may present as a grievance, under the machinery hereinafter provided, his dissatisfaction with such discharge. If the final determination is that such discharged employee was unjustly discharged, such employee shall be reinstated immediately to his former position without loss of seniority rank and shall be entitled to compen-

sation for time actually lost in each work week at his regular rate of pay.

• Section 2: An employee who resigns or is laid off because of lack of work, will, upon his request, be furnished with a statement by the Company as to the character of his service with the Company.

#### Article IV

##### Seniority

Seniority shall be defined as the length of service since the last date of hiring. Length of service with the company is the length of uninterrupted employment with the company commencing with the latest date of hiring. For the purpose of promotions, seniority shall be based upon length of continuous service in the applicable job classification. The company's record in respect to last employment date and length of service on each job classification shall be conclusive.

New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first three months of actual employment and will receive no continuous service credit during such period. At the end of the probationary period the employee's seniority shall be retroactive to the date of hire.

Seniority will be lost by any act which breaks the continuous employment with the company.

An employee who leaves the employ of the company as a result of his induction in the armed forces of the United States, shall upon reinstatement on the company's

active payroll be given continuous service credit for the time served in the armed forces. Continuous service credit shall discontinue upon voluntary re-enlistment in the armed services. It is understood that the company shall reinstate as required by law, employees who left their positions upon induction in the armed forces of the United States.

Where a "Temporary employee" or a "Part-time employee" is permanently employed on full time, the aggregate of his temporary or part time period shall not be added to his period of regular employment in determining length of service, but his service shall date from the beginning of his most recent full time employment.

"Continuous service" shall be broken by the quitting or discharge of an employee.

## Article V.

### Promotions

Where the service record, physical fitness, application, ability to perform the duties of a higher position, skill and efficiency are relatively equal, the Company will consider seniority as the controlling factor in the promotion of an employee to a better position, it being understood that any employee feeling himself aggrieved by the failure of the Company to promote him, or the Union in his behalf, may present such dissatisfaction as a grievance under the grievance machinery hereinafter provided.

## Article VI

## Work Day and Work Week

The established work week shall consist of five consecutive days beginning on Monday, and the normal work day shall be eight hours of work which shall be consecutive except for a lunch period of one hour.

## Article VII

## Wages

Section 1: The Company shall pay the employees covered by this agreement wages in accordance with the schedule and regulations set forth in Exhibit "A" which is attached hereto and made a part hereof (hereinafter called the "regular rate").

Section 2: For work performed not in excess of eight (8) hours per work day or not in excess of forty (40) hours per work week, the Company shall pay wages at the regular rate.

Section 3: For any work performed in excess of eight hours per work day or in excess of forty hours per work week, the Company shall pay wages at one and one-half times the regular rate; however, for work performed on Sunday, the Company shall pay wages at twice the regular rate. When overtime work is required in any office, such overtime work shall be offered among the employees of such office equally.

Section 4: Any employee required to work on the following days shall receive overtime pay at the rate of two

times the regular rate for such work and if not required to work on such days, shall receive pay for such days at the regular rate:

New Year's Day	Labor Day	Texas Ind. Day
Thanksgiving Day	Memorial Day	Fourth of July
	Christmas Day	

and if any such day falls on a Saturday or Sunday, the next Monday shall be observed as the holiday.

Section 6: An employee who replaces another employee who is on vacation, extended sick leave or leave of absence shall be paid as follows.

a. If the employee replaced has a higher classification than the substituting employee, the substituting employee shall receive either his regular rate of pay plus an additional 10c per hour, or the minimal rate of pay for the classification of the replaced employee, whichever is the higher.

b. If the replaced employee has a lower classification than the substituting employee, the substituting employee shall be paid at his regular rate of pay, unless he has had five (5) days' advance notice that he has been permanently demoted.

This section shall not apply to probationary employees.

## Article VIII

### Vacations and Leave

Section 1: All employees who have completed one year's continuous service will be granted two weeks' vacation

with pay and thereafter each year until the fifteenth anniversary.

Section 2: Commencing with the January 1 of the year in which the fifteenth anniversary of accredited service occurs, employees will qualify for three weeks' vacation with pay.

Section 3: During the first year of employment an employee will be allowed five (5) days' sick leave with pay; during the second year of employment he will be allowed ten (10) days with pay; and so on until after twelve years of continuous employment an employee will be allowed thirteen (13) weeks with pay.

Section 4: Upon request, for a reasonable purpose and a reasonable time, the Company shall grant an employee leave of absence, without pay. Such leave shall not affect the seniority status of an employee.

Section 5: During the life of this agreement, the Company agrees to grant leaves of absence to not more than three employees who are engaged in local or international union activity with accumulated seniority, provided, however, that the company shall be given at least three days' notice prior to the date the leave of absence is to begin. Such leaves of absence are not to extend beyond one year, but may be renewed at the request of the union.

Employees, not to exceed four, selected to attend state or national conventions, shall be permitted to be absent from work to attend same without loss of seniority or other rights, provided that four days' notice has been given to the Company.

Section 6: When absent on jury duty, an employee will be paid his regular rate for time lost.

## Article IX

### Discrimination and Union Activity

Section 1: The Company agrees that it will not interfere with, restrain, or coerce employees because of membership or lawful activity in the union, nor will it, by discrimination in respect to hire, tenure of employment or any term or condition of employment, attempt to discourage membership in the union.

Section 2: The Union agrees that neither the Union nor its members will intimidate or coerce the employees in respect to his right to work in respect to Union activity or membership, and further that there shall be no solicitation of employees for Union membership or dues on Company time.

## Article X

### Military Service

An employee drafted into the armed services of the United States shall return to his former position or some similar existing position with full seniority rights and pay status the same as if he had been in continuous Company service; provided such employee shall be allowed ninety (90) days from the date of discharge to report for duty with the Company. At the request of any employee, he shall be furnished with a bona fide letter of intent outlining the above provisions.

## Article XII

## Strikes and Lockouts

There shall be no strikes, slow-downs or work stoppages of any kind during the life of this agreement, and there shall be no lockout of employees by the Company during said term.

## Article XIII

## Grievances

Section 1. Discussion of request or complaint. Any employee who believes that he has a justifiable request or complaint shall discuss the request or complaint with the Supervisor in an attempt to settle it.

Section 2. Definition of Grievance. "Grievance" as used in this agreement is limited to a complaint which has not been settled as a result of the discussion required in Section 1 hereof, or which involves the interpretation or application of, or compliance with, the provisions of this agreement.

## Section 3. Grievance Procedure.

a. A grievance which has not been settled within 5 days as a result of the discussion required in Section 1 hereof, to be considered further must be filed promptly in writing with the employee's supervisor, stating fully the nature of the grievance and the grounds for complaint or dissatisfaction. The Supervisor shall answer the grievance within 10 days from date of presentation

in writing; signing and dating his reply and returning one copy thereof to the employee or the steward. If the supervisor's decision is not appealed within 10 days, the grievance shall be considered on the basis of the decision made and shall not be eligible for further appeal.

b. In order for a grievance to be considered further, it shall be appealed in writing to the Department Manager within 10 days from the date of the Supervisor's written reply. An appealed grievance shall be discussed in an attempt of settlement at a mutually convenient time between the steward or employee and the Department Manager and answered within 10 days from appeal. The Department Manager's decision in writing, after signing and dating it, shall be given to the steward or employee. If the Department Manager's decision is not appealed within 10 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

c. In order for a grievance to be considered further, written notice of appeal by the Business Representative of the Union shall be served to the Company's Secretary, or his delegated representative, within 10 days of the date of the Manager's written decision. Discussion of the appealed grievance shall take place at the earliest date of mutual convenience following receipt of the notice of appeal, but not later than 15 days after notice is received by Company's secretary or his delegated representative, unless changed by mutual agreement.

Grievances discussed in such meetings shall be answered in writing by the representative of the Company within 15 days after the date of such meeting; unless by mutual agreement a different date for disposition is agreed upon.

Whenever either party concludes that further meetings can not contribute to the settlement of the grievance, the dissatisfied party may, by written notice within 15 days from the date of the written decision of the last previous meeting, appeal the grievance to arbitration.

Section 4. If either party shall elect to submit a grievance to arbitration, it shall give written notice to the other party of intention to arbitrate. Such notice shall contain a statement specifying the grievance. Upon receipt of any such notice the parties shall, at the earliest date of mutual convenience, confer in an effort to select by mutual consent, an impartial board of arbitration.

The board of arbitration shall consist of one arbitrator appointed by the union and another by the company and a third appointed by the first two arbitrators. In the event that the first two arbitrators are unable to agree on the appointment of the third arbitrator, such arbitrator shall be appointed by Sen. Dist. Judge of U. S. Dist. Court of the Southern Dist. of Texas.

The expense incident to the appointment and services of the third arbitrator shall be borne equally by the union and the company.

Section 5. Nothing in this Article shall be construed to deprive any individual employee or group of employees of their right at any time to present grievances to the company or to have such grievances adjusted without the intervention of the Union, as long as the adjustment shall not be inconsistent with the terms of this contract, and provided the union is given notice and opportunity to be present at such adjustment.

Article XIV

Conditions

This agreement is subject to the provisions of existing laws, regulations, applicable Executive Orders, and other orders of duly constituted authorities of the United States and the State of Texas which are now and may hereinafter be in force during the term of this agreement.

Article XV

Term

This agreement shall remain in full force and effect until ....., provided, that unless one party shall give written notice to the contrary to the other party not later than sixty (60) days prior to such expiration date, this agreement shall be automatically renewed for a period of one year from such expiration date. Unless similar notice be given by one party to the other, such agreement as so renewed shall be automatically renewed for another period of one year. In no event, except by express agreement between the parties in this agreement, shall this agreement remain in force beyond .....

In Witness Whereof, the Parties hereto have executed this agreement this ..... day of .....

OFFICE EMPLOYEES

INTERNATIONAL  
UNION LOCAL NO. 27,  
A. F. OF L.

AMERICAN NATIONAL  
INSURANCE  
COMPANY

.....  
.....  
.....  
.....  
.....  
.....



VOLUME III

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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NO. 126

NATIONAL LABOR RELATIONS BOARD, PETITIONER

VS.  
AMERICAN NATIONAL INSURANCE COMPANY

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

---

PETITION FOR CERTIORARI FILED JUNE 18, 1951

CERTIORARI GRANTED OCTOBER 8, 1951

**APPENDIX TO RESPONDENT'S BRIEF**

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**UNITED STATES  
COURT OF APPEALS**

**FIFTH CIRCUIT.**

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**No. 13,198**

---

**AMERICAN NATIONAL INSURANCE COMPANY,**  
**Petitioner,**

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
**Respondent.**

**ON PETITION TO REVIEW AND SET ASIDE AN  
ORDER OF THE NATIONAL LABOR RELATIONS  
BOARD.**

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# INDEX.

	PAGE
Witnesses:	
Jeanne V. Beal (for General Counsel):	
Direct Examination .....	2
Cross Examination .....	3
Ellen Neill:	
Direct Examination .....	5
Ernestine Rincon:	
Direct Examination .....	7
Cross Examination .....	10
Elvira Martinez:	
Direct Examination .....	10
Cross Examination .....	12
Josephine Cortez:	
Direct Examination .....	12
Ruby Sandros:	
Direct Examination .....	13
Cross Examination .....	15
Shirley Dial:	
Direct Examination .....	15
C. A. Stafford:	
Direct Examination .....	20
C. A. Stafford (resumed):	
Cross Examination .....	125
Leonard Mosele:	
Direct Examination .....	131
Re-Direct Examination .....	132
Leonard Mosele (resumed):	
Re-Direct Examination .....	134
Louis J. Dibrell (for Respondent):	
Direct Examination .....	138
General Counsel's Exhibit 24 .....	140
General Counsel's Exhibit 25 .....	141



**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**No. 13,198**

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**AMERICAN NATIONAL INSURANCE COMPANY,**  
**Petitioner,**

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
**Respondent.**

---

**ON PETITION TO REVIEW AND SET ASIDE AN  
ORDER OF THE NATIONAL LABOR RELATIONS  
BOARD.**

---

\* \* \* \* \*

[13] Mr. Wilson:

It is stipulated and agreed by and among General Counsel, the Union, and the Company that L. H. Peacock is Assistant Manager of the Ordinary Policy Issue Department of American National Insurance Company and is a supervisor within [14] the meaning of the Act. I so stipulate.

Do you stipulate, Mr. Stafford?

Mr. Stafford:

Yes.

Trial Examiner Royster:

Mr. Dibrell?

Mr. Dibrell:

Yes, sir.

Trial Examiner Royster:

Very well, the stipulation is accepted.

\* \* \* \* \*

[16] JEANNE V. BEAL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Wilson:)

Q. Your name is Mrs. Jeanne Beal?

A. That's right.

Q. You are employed at American National Insurance Company?

A. Yes.

Q. About how long have you been employed there?

A. My employment began on October 29, 1947, up to the present date.

Q. Do you know L. H. Peacock?

A. I do.

Q. It has been stipulated in this case he is the Assistant Manager of the Policy Issue Department—

Trial Examiner Royster:

Ordinary Policy.

(By Mr. Wilson:)

Q. Ordinary Policy Department, and that he is supervisor. What department are you in?

A. I am under Mr. Peacock, in the Ordinary Issue Department.

Q. Do you recall a time on or about August 25, 1948, when [17] you had a conversation with Mr. Peacock?

A. I do.

Q. Will you tell us about that conversation, what you said, if anything, what he said, if anything?

A. I was working at my desk and Mr. Peacock approached me at my desk. He asked me about the union meeting the night previous, and I answered that I did not wish to discuss it because we had been warned not to talk about Unionism during working hours, and that if he wanted any information that there was a lady in the back whom I was sure could tell him, and I named Miss Dorothy Lee. He said he didn't wish any conversation with her about the union meeting. He wanted to know what I thought about it. And I again told him I did not wish to discuss the subject. And he said, "Why not," and started some arguments or tried to, and I told him I had always had a nice opinion of him and I wished to retain it so would he please not try to discuss the subject further with me.

Mr. Wilson:

You may examine.

Cross Examination.

(By Mr. Louis Dibrell:)

Q. Was this before or after the election?

A. It was after the election.

Q. How long after the election?

A. It was the morning after the first union meeting, after the election. That was on Monday night, the week following [18] the election.

\* \* \* \* \*

[20] Mr. Wilson:

\* \* \* \* \*

I will ask Mr. Dibrell to stipulate that the election was held on August 19, 1948.

Mr. Dibrell:

I think that is correct. I wasn't with the Company at that time. We will stipulate.

Trial Examiner Royster:

Is the stipulation on or about August 19, 1948?

Mr. Wilson:

Yes, sir.

Trial Examiner Royster:

Do you stipulate, Mr. Stafford?

Mr. Stafford:

Yes.

Trial Examiner Royster:

The stipulation is accepted.

\* \* \* \* \*

[48] ELLEN NEILL, a witness called by and on behalf of General Counsel, being first duly sworn was examined, and testified as follows:

Direct Examination.

(By Mr. Wilson:)

Q. Your name is Ellen Neill?

A. That's right.

Q. You reside in Waco?

[49] A. That's right.

Q. At present you are not employed by the American National Insurance Company?

A. No, sir.

Q. Was there a time when you were employed by American National Insurance Company?

A. That's right.

Q. About when was the date of your last employment by the Company?

A. November 29, 1948.

Q. That is when you started your last employment?

A. That's right.

Q. And when did you terminate or end your last employment with the company? About when?

A. About May.

Q. Of this year?

A. That's right.

\* \* \* \* \*

[50] Q. Did you have a conversation with Mr. Peacock at that time?

A. I did.

Q. Will you tell us as best you can recall, what Mr. Peacock said to you and what you said to Mr. Peacock at that time.

A. Mr. Peacock handed the letter to me personally and he told me to sit there and read it over, which I did, and he asked me if I understood it, and I told him I did; and he said if there was anything I wanted to discuss about the letter I should talk to him and nobody else, and not during working hours; he wanted us not to talk about that, and I told him I would and that I understood him.

Q. Was anything said about the union?

A. He said if I knew anything about it, and I told him I didn't. He asked if I had attended any meetings or anything like that and I told I had not.

Q. Do you recall anything else said at that conversation?

A. He asked me if I knew anything about it and I told him no, and he asked if I belonged and I told him no that I didn't know anything about it and that I did not belong.

Q. Did you ever have any other conversation with Mr. Peacock in which the union was mentioned?

A. Yes, sir, it was about December or January—I am not sure.

[51] Q. And will you tell us please, where that conversation was?

A. Well, he asked me about the unions.

Q. Where was it, first?

A. Well, it was at his desk.

Q. What did he say and what did you say?

A. He wanted to know if I belonged to the union and he still wanted to know if I knew anything about it, and I told him no.

Q. And do you recall anything else that he said at that time?

A. He wanted to know what went on at the meetings and I said, "Mr. Peacock, I did not go and so I do not know."

Q. I will ask you now if you can recall anything else that was said in that particular conversation.

A. Well he told me—he didn't tell me not to join but he said I had better advantages outside the union and that the ones organizing this union had resources, income outside the company so they could afford a strike, and just a common employee couldn't because we were just working hand to mouth and we would have better advantages outside.

[93] ERNESTINE RINCON, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Wilson:)

Q. Your name is Ernestine Rincon?

A. Yes, sir.

Q. And you are employed by the American National Insurance Company?

A. Yes, sir.

Q. How long, about how long have you worked for American National Insurance Company?

A. Four years and four months.

Q. In what department are you?

A. Department of Issue.

Q. You know Mr. L. H. Peacock?

A. Yes, sir.

Q. Is he in your department?

A. Yes, sir.

Q. What is his position in your department?

[94] A. Assistant Manager.

Q. Have you ever had any conversations with Mr. L. H. Peacock about the Union?

A. Yes, sir.

Q. Will you tell us when and where you had the first conversation with Mr. Peacock?

A. About a couple of days before the election.

Q. And where?

A. At his desk.

Q. How did you happen to be at his desk?

A. I was going to discuss some work.

Q. Tell us what he said, if anything, and what you said, if anything, about the Union.

A. He asked me if I knew anything about the Union, if I was interested, and I told him I didn't know anything about it because I had never talked to anybody about the Union, and I told him about my daddy belonging to the Union and he didn't care for it, and once he was disappointed of it. It was because of his friend. They were short of work, and he went for help to the Union and didn't get it. He quit paying the Union and so daddy decided to quit too.

Q. What did Mr. Peacock say when you told the story?

A. He said that was the way the Union would treat everybody.

Q. Was anything further said at that conversation?

A. He also said if we thought Mr. Moody would ever sign a [95] contract with the Union, we was very much mistaken, and if we thought of going on strike for the Union he would rather sell the business just like he did the laundry.

Q. And was anything said about Mr. Moody with respect to the wealth, power, or anything like that?

A. No, sir.

Q. Now, did you have another conversation—I am sorry—was anything else said in that conversation that you recall?

A. No, sir.

Q. Did you have any other conversation after that, with Mr. Peacock?

A. Well after the first meeting, a couple of weeks after the election.

Q. And where was this second conversation?

A. At his desk.

Q. And again, how did you happen to be at his desk?

A. Discussing work.

Q. Will you tell us what Peacock said, what you said, if anything, about the Union?

A. Well, it was the day after the first meeting of the Union, and then he asked me what they talked about at the union meeting, so I told him I couldn't tell him, why didn't he ask Dorothy Lee, and she had discussed it with Mr. Hampton that morning. He said, "Aren't you my friend? You could tell me about it. I have done a lot." I said, "There is not much to [96] say." He said, "What did they promise you?" I said, "They didn't promise anything. They were going to do the best they could."

Q. Was anything else said?

A. No, sir.

Q. You mentioned Hampton. You told Peacock Dorothy Lee had told Mr. Hampton. Who is he?

A. He is the manager, I think.

Q. Do you happen to know whether or not he is Peacock's boss?

A. Yes, sir, he is.

Q. Do you recall whether or not in either one of those conversations there was any discussion either by you or Mr. Peacock about the amount of money Mr. Moody had?

A. No.

Q. You don't recall?

A. No.

Mr. Wilson:

That is all. You may examine.

Cross Examination.

(By Mr. Dibrell:)

Q. You said you had two separate conversations with Mr. Peacock?

A. Yes, sir.

Q. Both were at his desk, in the department?

A. Yes, sir.

Q. And both were a short length of time after the election?

[97] A. One was after the election, one was before.

Q. One was before the election and one was after?

A. Yes, sir.

ELVIRA MARTINEZ, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Wilson:)

Q. Your name is Elvira Martinez?

A. Yes.

Q. You are employed by American National Insurance Company?

A. Yes.

Q. About how long have you worked for American National?

A. About five years, and five months.

Q. What department are you in?

A. Department of Issue.

Q. Department of Issue?

A. Yes.

Q. You know Mr. L. H. Peacock?

A. Yes, sir.

[98] Q. He is in your department?

A. Yes.

Q. What is his job in your department?

A. Assistant manager.

Q. Will you tell us whether or not before the election you ever had a conversation with Mr. Peacock about the Union?

A. Yes.

Q. And about how long before the election did you have this conversation with Mr. Peacock?

A. I really don't remember—a couple of days before.

Q. What was it that Mr. Peacock said to you and what did you say to Mr. Peacock?

A. He called me to his desk and said what did I know about the Union, and I said I didn't know anything about the Union but I would ask my daddy. My daddy had been secretary of the A. F. of L. High Grade Packing Company. He said, "Ask him and he will tell you it is not any good and not to vote for it." He told me to talk to the girls, my friends, and not to vote for it, if I did, he would try to give me a raise.

Mr. Wilson:

You may examine.

## Cross Examination.

(By Mr. Dibrell:)

Q. You had one conversation with Mr. Peacock a couple of days before the election?

A. Yes, sir.

\* \* \* \* \*

[99] JOSEPHINE CORTEZ, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination.

(By Mr. Wilson:)

Q. Your name is Josephine Cortez?

A. Yes, sir.

Q. And you are employed by American National Insurance Company?

A. Yes, sir.

Q. About how long have you worked for American National Insurance Company?

A. Three years.

Q. Can you tell us whether or not you ever had a conversation with Mr. Peacock in which he discussed a raise?

A. Yes, sir.

Q. About when was that conversation?

A. The latter part of January or February, of this year.

Q. Of this year, 1949?

A. Yes, sir, this year.

Q. Will you tell us everything that was said in that conversation, that was said by you and Mr. Peacock.

A. Well, I went up to Mr. Peacock's desk and talked about my check and I asked him about my raise and he told me I already [100] had got a raise two months before. So I told him it was so little, I didn't notice it. So he told me—no, I asked him, I thought I was doing a lot of work for the money I was getting. So he told me maybe if it wasn't for that thing he could get me a raise. I asked him what. I didn't know anything about the Union. And he said, "Don't you go to union meetings?" I said, "No, sir, I don't. I don't know where they are." He said, "I think you are doing a nice thing." That is all he told me.

Q. Did you get the raise?

A. No, sir, I didn't.

RUBY SANDROS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination.

(By Mr. Wilson:)

Q. Your name is Ruby Sandros?

A. That is right.

Q. Have you ever had any conversations with L. H. Peacock about the Union.

A. Two.

Q. When, approximately when was the first conversation you had?

[101]-A. The first conversation was approximately two weeks after the election.

Q. Where?

A. At his desk.

Q. How did you happen to be there?

A. I went there on business.

Q. Tell us what he said and what you said, if anything about the Union.

A. He never did mention the word "Union" to me. After we got through discussing our business, which pertained to my work, he asked me the question: Did I pay my dues, and automatically I said yes.

Q. Anything else?

A. That was all at that moment.

Q. What about the second conversation?

A. The second conversation took place during the procedure of a strike which took place within Galveston County.

Q. About when was that?

A. That was during the month of January—"Moody Month."

Q. What is "Moody Month?"

A. It is known to us, at least, I have been told the agents get together to put out so much insurance to celebrate the birthday of Mr. Moody.

Q. It has to do with the man, Moody?

A. That's right.

[102] Q. How did you happen to be there?

A. I went on business again.

Q. What was said by you and what was said by Mr. Peacock, if anything, either about strikes or Moody or anything like that?

A. Well, he mentioned, he said, "Do you know what is happening to these people going on strikes?" And I didn't answer him at first. Then he said, "If a strike was called, that the State Militia would come to protect you so that you could work." And I told him then, "Mr. Peacock, I don't care if the State Militia or the Rangers came, I wouldn't work because my father is a Union man and I respect the union ideas."

Q. Was anything further said by Mr. Peacock at that time?

A. No, that was all.

Mr. Wilson:

That is all.

### Cross Examination.

(By Mr. Dibrell:)

Q. You had two conversations, one within two weeks of the election, which would put it around September 1.

A. Approximately—not on September 1, because that would be Labor Day.

Q. I mean in that neighborhood, some two weeks after August 19, and the second one during the month of January?

A. That's right.

[103] SHIRLEY DIAL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination.

(Mr. Wilson:)

Q. Your name is Shirley Dial?

A. Yes, sir.

Q. You are employed by American National Insurance Company?

A. Yes, sir.

Q. What department?

A. Department of Issue.

Q. That is the department in which Mr. Peacock is Assistant Manager?

A. Yes.

Q. Do you belong to the Union?

A. Yes, sir.

Q. Back in November of 1947, will you tell us whether or not you had a conversation with Mr. Peacock about the Union?

A. Yes, sir.

Q. Tell us what he said and what you said.

A. Well, he called me to his desk and he asked me if I had attended a union meeting the night before, and I told him no. And he said well, there was a man told him that he seen me attending this meeting, and I said well I didn't and he said well, "I am sure the man knew who you were." And that was all [104] that was said at that time.

Q. Then after that, did you have any further conversations with Mr. Peacock?

A. Yes, several.

Q. And tell us whether or not you had any conversations with him shortly before the election?

A. Yes, sir.

Q. Now, I have used the word "shortly before the election" and you have said yes. Will you tell us about how many conversations you have had with him prior to the election. Tell us that first, eliminating the one you have already told us about that took place November, 1947.

A. Well, three or four.

Q. And bearing in mind the election was August 19, about when was the first of this series of conversations?

A. Oh, a week or ten days before.

Q. Now, will you tell us as best you can recall, first of all, where did the first conversation take place that you had about a week or ten days before the election?

A. At his desk.

Q. How did you happen to be at his desk?

A. He sent one of the girls after me.

Q. Tell us everything he said and everything you said as best you can recall about the first conversation.

A. Well, he asked me what I thought of the Union and I told [105] him I didn't know. And he asked me if I knew anything about the Union and I told him yes that my husband was a union man and he was active in his Union and that he had explained to me about the Union. And he asked me what Union that my husband belonged to and I told him the Boilermakers, and he said, well, that is fine for working, laboring men like that, but, he said, a machinist or no one, like that knows anything about office work. He asked me if I had signed a card, and I told him yes, and he said well, even if I had signed a card it didn't mean I would have to join a Union, and he asked me, he said, "Do you girls think Mr. Moody would sign a contract with your Union?" And he said, "Some of the negro wenches down here at the laundry decided they wanted a raise so they went on a strike." He said, "Look what happened to them. You will never get a Union in here. Moody has too much power." And that is about all, the first time.

Q. Then what was said at the second conversation, as best as you can recall?

A. Well, he called me to his desk and he said, "Shirley, the girls back in your department don't understand Union's" and he said, "You could be misjudging them in a lot of ways. You could be trying to get them misled in the Union."

Q. Do you recall whether or not anything else was said in that conversation?

A. Well, I really don't remember.

[106] Q. Did you or did you not have another conversation?

A. Yes, he came to my machine.

Q. So we will have ther ecord clear, all these conversations were within a week or ten days before the election?

A. Yes.

Q. Tell us about the third conversation.

A. I was busy working and he came to my machine and had me cut the machine off.

Q. He had you cut the machine off?

A. Yes, and he asked me if I still felt the same way about the Union. He said, "Understand, I don't want any mushy-mouthed people. If you are for it, well say you are." And I told him I still felt the same way. He asked me if I discussed this office Union with my husband and I said yes, and again he said if I signed a card it didn't matter, that I didn't have to join a Union.

Q. Do you recall anything else that was said? Do you recall whether or not anything else was said in that conversation about raises?

A. Yes, he said that if a Union went through, he said we wouldn't get our six month raises, and he said our privileges would be taken away from us, and he said—he also said at that time, he said, "You won't have me here. You can't come to me and talk. You will have your steward, and I won't have all the say-so who will be hired and fired, but," he said, "I [107] will have some."

Q. Now he said something about you won't have your six months raises?

A. He said they will be cut out.

Q. What had the custom been up to that time in respect to raises every six months—do you understand what I mean?

A. No, sir.

Q. What is a six months raise?

A. Well, after you work there six months, you are entitled to a five dollar raise.

Q. Did you ever have any other conversations with Mr. Peacock about the Union?

A. Not before the election.

Q. After the election?

A. Oh yes.

Q. Well, now, about how many conversations did you have with Mr. Peacock after the election?

A. Well, a week, about a week after the election.

Q. What happened?

A. I had gone to his desk to show him some work and he asked me how the Union was getting along, what we were doing at our meetings. And I told him I didn't know. He said, "What do you mean, you don't know? Do you go over there and go to sleep?" And I said I would be afraid to be telling stuff. I said, "I'll tell you what, Mr. Peacock, you come over to our meetings. They [108] are open to you." I said, "Mr. Wilson has asked all of you to come." He said, "You wouldn't want us over there. You would throw me out." I said, "No, we won't; come on over."

Q. Did you have another conversation with Mr. Peacock in which the Union was mentioned?

A. Yes, when I got my six months raise—

Q. When did you get your six months raise?

A. Well, I think it was back in January.

Q. Of this year?

A. Yes.

Q. Tell us what was said at the time you got this six months raise sometime around January?

A. Well, I had been up to his desk again and he just stopped me and said, "Shirley, the Company is giving you a five dollar raise even though you are Union."

Q. Do you recall any other conversations?

A. Yes, sir.

Q. Will you tell us about another conversation?

A. Well, back in February, I had gone upstairs to take my test and when he told me I failed my test at that time, he said, "How are they going to classify you, as operators or clerks?" I said, "I don't know, clerks, operators—I don't know."

Q. As I understand it, he asked you who was going to classify you?

[109] A. He meant the Union.

Q. Did he say Union?

A. Well, he asked me, he said, "How."

Q. Did you ever have any other conversation with him?

A. No, sir, not after that.

\* \* \* \* \*

[129] C. A. STAFFORD, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

(By Mr. Wilson:)

Q. Your name is Amos Stafford?

A. Commonly called C. A. Stafford.

Q. Tell us what your position is with the Office Employees International Union?

A. Vice-President of Office Employees International Union.

Mr. Wilson:

I ask that this piece of paper be marked as General Counsel's Exhibit 7 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 7, for identification.)

(By Mr. Wilson:)

Q. I show you General Counsel's Exhibit 7 for identification, and ask you if, of your own personal knowledge, you know whether or not it is a copy of a letter [130] sent by Mr. A. G. Wilson to Mr. William P. Vogler, Executive Vice-President of American National Insurance Company, requesting bargaining?

Mr. Dibrell:

May we see it, please, counsel?

Mr. Wilson:

Surely, of course.

(Document handed to counsel for Respondent.)

Mr. Dibrell:

We have no objection.

Mr. Wilson:

In other words, you will stipulate, Mr. Dibrell, that General Counsel's Exhibit No. 7 for identification is a copy of a letter received by the Company from the Office Employees International Union?

Mr. Dibrell:

I assume that it is. I don't really know, but we did have the meeting.

(By Mr. Wilson:)

Q. I show you General Counsel's Exhibit 7 for identification and ask you if it is a copy of a letter which was sent to the Company on or about November 13, 1948.

A. This seems to be an exact copy of a letter sent by Wilson. He also furnished me a copy and I have a copy in my files.

Mr. C. G. Dibrell:

Here is the original. Let me see it and I will compare it.

(Document handed to counsel:)

Mr. Dibrell:

We will stipulate it is.

Mr. Wilson:

I offer General Counsel's Exhibit 7 in evidence.

[131] Trail Examiner Royster:

The stipulation is accepted and without objection, General Counsel's Exhibit 7 is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 7, for identification, was received in evidence.)

Mr. Dibrell:

I suggest that we have the offer in this way. All we have is the yellow office copy. Suppose you read this into the record and then it will serve any useful purpose. We will furnish another copy.

Mr. Wilson:

I think that is an excellent suggestion. I thank you for your cooperation. And I will propose this stipulation, Mr. Dibrell.

General Counsel offers to stipulate that on or about November 19, 1948, a letter was written by Dibrell, Dibrell and Greer to Mr. A. G. Wirson, Business Representative, Office Employees International Union, Local No. 27, Galveston, Texas, which read:

"Dear Mr. Wilson: Your letter of November 13 to Mr. Vogler by him November 16 has been handed to us for reply.

"We will be pleased to meet with you here in this office on November 30 at 10:00 a. m. and unless we hear from you to the contrary will presume that such date and time is satisfactory to you.

"At this first conference, we seen no occasion for having any large delegation present, but you can use your own judgment [132] in that regard. Yours very truly, Dibrell, Dibrell, and Greer."

And I see the initials C. G. D. I presume it was signed by Mr. Charles Dibrell.

Mr. Dibrell:

Yes, sir.

Trial Examiner Royster:

Do you so stipulate?

Mr. Dibrell:

Yes, sir.

Trial Examiner Royster:

Very well, the stipulation is accepted.

(By Mr. Wilson:)

Q. Now, pursuant to the letter which I have just read in the record, will you tell us whether or not you met with representatives of American National Insurance Company on or about November 30, 1948?

A. We did meet with the representatives of the American National Insurance Company on or about November 30, 1948.

Q. Now, when you say "we" did the Union have a committee?

A. The Union had a committee consisting of Mrs. Imlay, Mrs. Beal, Mrs. Fee, A. G. Wilson, the Business Agent, and myself. The Company had present Mr. Charles Dibrell, Mr. Louis Dibrell, at that first meeting.

Q. Where was that meeting held?

A. In the office of either Mr. Charles Dibrell or Louis Dibrell. I can't remember which office it was.

Q. Both offices—

A. One adjoins the other.

Q. They are both in the same law office?

[133] A. That's correct, the same suite of offices.

Q. When was the last conference that you had with representatives of the Company in connection with bargaining or attempt to bargain?

A. The last conference held with management was held last Monday.

Q. By "last Monday," you are referring to the Monday of this week?

A. Yes, sir, I think that was July 25. I will have to look at the calendar to be sure of the date.

Mr. Dibrell:  
That's right.

Mr. Wilson:  
May we be off the record a minute?

Trial Examiner Royster:  
Off the record.

(Discussion off the record.)

Trial Examiner Royster:  
On the record.

Mr. Wilson:  
I ask that this be marked as General Counsel's Exhibit 8 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 8, for identification.)

(By Mr. Wilson:)

Q. Mr. Stafford, I show you General Counsel's Exhibit No. 8 for identification and ask you to look at it and tell us if it is a photostatic copy of a contract which you presented to the representatives, or the proposed contract you presented to representatives of the Company on or about November 30, 1948?

[134] Mr. Dibrell:

Without in any manner attempting to interfere with whatever way Mr. Wilson sees fit to present his case, I do offer to make certain stipulations as we go along. It might shorten the offer. In respect to this, we will stipulate, in the meeting of November 30, which was the first

meeting we had, that copies of this contract about which you are asking the witness, were given to the Company as the Union's proposed contract.

Mr. Wilson:

Thank you sir.

Trial Examiner Royster:

Will you accept the stipulation?

Mr. Wilson:

I accept the stipulation.

Trial Examiner Royster:

Very well.

Mr. Wilson:

Of course you are stipulating this is a photostatic copy of that proposed contract General Counsel's Exhibit 8.

Mr. Dibrell:

We are stipulating it is a photostatic copy insofar as the typewritten parts are concerned and it may be used by you in the interrogation of this witness, the understanding being for the purpose of the record going up, a photostat of the unmarked copy is to be submitted.

Mr. Wilson:

I accept your stipulation and I now offer in evidence General Counsel's Exhibit No. 8 for identification, it being understood I am offering only the typewritten parts of General Counsel's Exhibit 8, it being a fact there are on the sides and in the lines various notations in handwriting, and [135] also on page 5, Article 11 has a line running through it which would indicate it was marked out. But

I am not offering that line; I am making the offer of everything on General Counsel's No. 8 for identification which is in typewriting.

Trial Examiner Royster:

Very well, General Counsel's Exhibit 8 is received.

(The document heretofore marked General Counsel's Exhibit No. 8, for identification, was received in evidence.)

Trial Examiner Royster:

And let the record show if it does not already appear there, that the further photostat of General Counsel's Exhibit 8 will be substituted; the further photostat presumably will have no interlineations or marginal notes.

Mr. C. G. Dibrell:

I don't think any of us have any copies that are not marked. What we propose to do is to let our girls make a typewritten copy without the markings on it and we will offer that, but it won't be a photostat.

Trial Examiner Royster:

Any satisfactory copy will be all right.

Mr. Wilson:

I will ask that these three sheets or paper which are stapled together be marked General Counsel's Exhibit No. 9 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Mr. Wilson:

General Counsel offers to stipulate General Counsel's Exhibit No. 9 for identification is a copy of a so-called Step Rate Schedule which was presented by Union representatives to Company representatives on or about December 15, 1948.

Mr. Dibrell:

This observation is not intended to get—this has penciled notations which was put on by both of us, on our copies during the discussion of it and was not on when it was originally presented. Aside from that, we have no further explanation of it and certainly no objection.

Mr. Wilson:

So I offer General Counsel's Exhibit—by the way, you did accept my stipulation?

Mr. Dibrell:

Yes, sir.

Mr. Wilson:

General Counsel offers General Counsel's Exhibit 9 for identification, in evidence.

Trial Examiner Royster:

Again, only the typewriting that appears thereon?

Mr. Wilson:

So far as I am concerned, only the typewritten portions.

Trial Examiner Royster:

All right. Is there an objection?

Mr. Dibrell:

None.

Trial Examiner Royster:

Without objections, General Counsel's Exhibit No. 9 is received.

(The document heretofore marked General Counsel's Exhibit No. 9, for identification, was received in evidence.)

Mr. Wilson:

I ask that these photostats which are stapled together be marked as General Counsel's Exhibit No. 10 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10, for identification.)

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 10 for identification is a photostatic copy of a letter handed by Company representatives to Union representatives on or about January 18, 1949, and that attached to said letter are several sheets of paper referred to in the letter and headed (1) Anico Wage Promotion Plan; the next is Vacation Schedule, and the third is Paid Sick Leave Schedule.

Mr. Dibrell:

We have no objection to the offer. We do agree that we did present to them such a letter on the eighteenth which letter was dated January 17. I suggest that you proceed if you can with other phases because before I would like to agree this is a photostatic copy, I would like Mr. Mosele, while we are proceeding, to peruse it and compare it and if he tells me it is a copy, well there is no use taking time out.

Mr. Wilson:

Lest I forget it—I am sure you will find it is the correct copy, supposing I offer it in evidence now and of course if you have any objection later on you may raise it.

Mr. Dibrell:

That is satisfactory.

Mr. Wilson:

I offer General Counsel's Exhibit No. 10 in [138] evidence.

Trial Examiner Royster:

The stipulation in respect to General Counsel's Exhibit 10 is accepted and the Exhibit is received subject to check by Respondent as to the accuracy.

Mr. Dibrell:

Also subject to the agreement as to the other instruments, that only mimeographed parts, there being certain notations on this.

Mr. Wilson:

That's right. I am not offering any penciled notations.

Trial Examiner Royster:

All right.

(The document heretofore marked General Counsel's Exhibit No. 10, for identification, was received in evidence.)

Mr. Wilson:

I ask this piece of paper be marked as General Counsel's Exhibit No. 11 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 11, for identification.)

Mr. Wilson:

I propose a stipulation, Mr. Dibrell, the General Counsel's Exhibit No. 11 is a copy of a letter written by the Contract Negotiations Committee of the American National Insurance Company to the Contract Negotiations Committee of the Employees International Union, Local No. 27, which letter was handed to Mr. Stafford by Mr. Louis Dibrell on or about January 19, 1949.

Mr. Dibrell:

No objections. That stipulation is agreed to.

[139] Mr. Wilson:

I offer General Counsel's Exhibit No. 11 for identification, into evidence.

Trial Examiner Royster:

The stipulation is accepted and General Counsel's Exhibit No. 11 without objections is received.

(The document heretofore marked General Counsel's Exhibit No. 11, for identification, was received in evidence.)

Mr. Wilson:

I ask this be marked General Counsel's Exhibit 12 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 12 for identification.)

Mr. Wilson:

I propose a stipulation; Mr. Dibrell, that General Counsel's Exhibit No. 12 for identification is a copy of a letter written by the Company representatives to the Union representatives and handed by Mr. Louis Dibrell to Mr. C. A. Stafford on or about February 7, 1949.

Mr. Dibrell:

The stipulation is accepted.

Mr. Wilson:

I offer General Counsel's Exhibit No. 12 in evidence.

Trial Examiner Royster:

In view of the stipulation, General Counsel's Exhibit No. 12, without objection, is received.

(The document heretofore marked General Counsel's Exhibit No. 12, for identification was received in evidence.)

Mr. Wilson:

I ask this be marked as General Counsel's Exhibit No. 13 for identification.

[140] Thereupon the document above referred to was marked General Counsel's Exhibit No. 13, for identification.)

Mr. Wilson:

I propose a stipulation that General Counsel's Exhibit No. 13 is a copy of a letter written by the Union representatives to Company representatives and handed by Mr. C. A. Stafford to Mr. Louis Dibrell on or about February 7, 1949.

Mr. Dubrell:

This stipulation is agreed to.

Mr. Wilson:

I offer General Counsel's Exhibit No. 13 in evidence.

Trial Examiner Royster:

In view of the stipulation, General Counsel's Exhibit No. 13, without objection, is received.

(The document heretofore marked General Counsel's Exhibit No. 13, for identification, was received in evidence.)

Mr. Wilson:

I ask this be marked as General Counsel's Exhibit No. 14 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 14, for identification.)

Mr. Wilson:

I propose a stipulation that General Counsel's Exhibit No. 14 for identification is a copy of a letter written on or about February 17, 1949, by Louis Dibrell, as Chairman of the Company's Negotiating Committee, addressed to the Union Negotiating Committee, attention of C. A. Stafford, copies going to A. G. Wilson, Mr. John Thomas, excepting for the written "E" at the lower left hand corner, which I do not propose to offer in evidence.

[141] Mr. Dibrell:

The stipulation is agreed to.

Mr. Wilson:

I offer General Counsel's Exhibit No. 14 for identification in evidence.

Trial Examiner Royster:

The stipulation is accepted and General Counsel's Exhibit No. 14 is received.

(The document heretofore marked General Counsel's Exhibit No. 14, for identification, was received in evidence.)

Mr. Wilson:

I ask that this piece of paper be marked as General Counsel's Exhibit No. 15 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 15, for identification.)

Mr. Wilson:

I propose a stipulation that General Counsel's Exhibit No. 15 for identification is a copy of a letter addressed to Louis J. Dibrell; Chairman of the Company's Negotiating Committee, written by C. A. Stafford, with copies to John Thomas and A. G. Wilson, which letter was written on or about February 19, and received by the Company thereafter.

Mr. Dibrell:

The stipulation is agreed to.

Mr. Wilson:

I offer General Counsel's Exhibit No. 15 for identification, in evidence.

Trial Examiner Royster:

Without objection General Counsel's Exhibit No. 15 is received.

(The document heretofore marked General Counsel's Exhibit No. 15, for identification, was received in evidence.)

(By Mr. Wilson:)

Q. Mr. Stafford, suppose you tell us, in [142] general, as best you can, the history of your attempts to bargain with the Company, beginning with November 30, 1948.

Mr. Dibrell:

I conceive the question to ask for a general narrative relation by Mr. Stafford of the history of this thing as he recalls it, without specific questioning. So far as I personally am concerned, I agree and think that is the proper and only feasible thing that can come out, but I wish you would understand we request the same leeway in our presentation so we are not objecting to his having it.

Trial Examiner Royster:

All right.

A. The first meeting was held with management, as I have stated before, in either Mr. Louis or Mr. Charles Dibrell's office on or about November 30, 1948. I have listed the Negotiation Committee present for the Union and the Company. At the second meeting with the Company, Mr. Leonard Mosele, Secretary-Comptroller, came into the meeting. At the first meeting called by request by the Union, the Union presented a contract to the Company.

Q. Now, that contract you are talking about is General Counsel's Exhibit No. 8 in evidence?

A. It seems to be a copy of the original Contract.

Q. So you presented that to the Company on or about November 30, on November 30?

A. At the beginning of the meeting, the Union explained to Company that it won the bargaining rights and received certification [143] of the Board, which was general knowledge of both parties. The Union fully recognized that it had no right whatsoever to come in and demand that the Company agree to anything. But this instrument, as presented, was an attempt on the part of the Union to open contractual discussion between the management of the Company and the Union, and by collective bargaining through that date and the following dates, the Company and the Union could construct a contract mutually agreeable to both parties, and we thought would be mutually beneficial to both parties.

The Company agreed to that general statement and asked us to explain what we were thinking in the various Articles of the Contract. We spent considerable time in going over it, giving them our ideas as to what we meant by the wording of the various Articles and Sections, and so forth. Upon completion of that explanation, as I remember it, the Company asked about our Wage Rate. We explained to them that the certification covers three distinct channels of negotiation: 1, Rates of pay; 2, Hours of work; 3, Other conditions of employment. In our minds, we expressed the opinion, we expressed this opinion to the Company, that conditions of work were the most important part of the contract and we wished that they could see our viewpoint that we could get that settled tentatively, of course, bearing in mind, we had to agree over all three sections of the bargaining before a complete agreement could be reached, but [144] we would like to reach a tentative agreement on conditions of employment,

and this contract was to open up that phase of the discussion.

I don't remember just who expressed the Company's viewpoint, but they were rather perturbed, I should say, that we didn't give them a complete picture. But after the talk back and forth, I took it that they more or less agreed that we would proceed along that line and the meeting adjourned for the purpose of giving top management a chance to see what the Union was asking and to weigh it in their own minds.

Q. Now, at whose request was there an adjournment?

A. At the Company's request.

Q. And for how long a period did you adjourn—or I will put it this way: when did they say they wanted to meet you again?

A. There was considerable argument on that point at that meeting. The Union took the position that this contract should be negotiated in the shortest possible time. And we requested Company to cooperate with us in that. Of course, we understood they wanted to study our contract and prepare themselves to actually intelligently to bargain with us on it, and we suggested a meeting—I won't try to give the exact time—but within the next few days. However, Company was insistent upon a much longer period. But the Union and Company agreed we would meet December 15, as I recall it—I think the record [145] will bring out we met on December 15, the second time. I am a little hazy on dates. We have met so many times I won't try to pin it down to a certain date.

Q. Am I correct in understanding that somebody representing the Company said they would have to bring your proposal to top management for top managements consideration? Or didn't you say that? I am not trying to tell you what you said. I want to know whether I understood you properly.

A. Well, let me think just a minute. They wanted to take it to top management and they also wanted to study the contract without interruption of negotiating. They wanted to know what the picture was. It was a very logical reason I agreed with them on that.

Q. Now, we come to December 15, or about December 15, and to refresh your recollection in case it needs any refreshing on the date, December 15, since it is pointed out you are not too good on dates—

Mr. Dibrell:

We will agree it was December 15 if it will not be resented, as Mr. Stafford goes along, if he doesn't know, and I know, I will be glad to give you that information.

Mr. Wilson:

Splendid. I think it is an excellent gesture.

(By Mr. Wilson:)

Q. I show you Exhibit 9, which is the Step Rate Schedule and that will probably refresh your recollection and you will have your mind on the second meeting, of December 15. Tell us what happened on December 15. Where did you meet [146] and who was present?

A. Using the date December 15, we met around 10:00 o'clock in the Company's office. There was a new room being prepared for a meeting room down the hall a little ways from the office I have mentioned, a library, and I am not sure whether we met in that room or in the office. However, I am practically sure Mr. Mosele came in to that meeting. At the beginning of the meeting, we went back over our contract, but within a few minutes, the Company wanted to know if we had our wage demands—they called it demand, I believe, wage proposal to offer them. We went over the same discussion we had at our first

meeting relative to our idea of negotiating the contract in three sections: First, conditions of employment, second, hours of work, and lastly, rates of pay. That discussion became, well, I won't say heated, but it was rather intense. The Company expressed their views that they couldn't negotiate a contract until they had a complete picture and, as I—

Q. Just a minute. There is some drilling going on outside. I am going to ask you to keep your voice up as well as you can. Possibly it will help if I sit up here also. Go ahead.

A. The discussion was rather heated at the end and I believe it was Mr. Louis Dibrell stated emphatically they couldn't continue these negotiations until they did have a complete wage picture. With that, we asked for a recess to have time to prepare our wage information and present it to the Company and [147] asked for a reconvening of that meeting in the afternoon.

Q. I will ask you this: Did the Company say they could not or would not proceed?

A. They would not proceed.

Q. So you asked for an adjournment until the afternoon. Did you get the adjournment?

A. I got the adjournment and I think it was two o'clock. It was in the afternoon.

Q. That you met again?

A. Yes, sir.

Q. Go ahead, what happened then?

A. We presented our wage schedule in much the same manner as we did our contract. We went over it. The Company didn't make too many comments. The Union did state that this wasn't a demand but was to be considered as an opening instrument to get talks started on pay. We brought out that our asking pay on our first proposal was \$167.50 a month which was considerably less than any-

thing we had in any organized office in the area. We also brought out the point that the four hundred dollars maximum we were asking for their top rates in the unit was considerably less. In fact, we brought the whole proposal down below our standard rates we have in other industries, as we realized the overall national average of rates of pay in the insurance and banking business in the United States, the average was low, and we presented that, but we were definitely in a [148] bargaining position to bring it lower or to meet reasonably any suggestions the Company might offer. The Company refused that in a—well, I won't say they poked fun, but it was rather amusing that we would come in and ask such rates for an insurance company. However, that be as it may—

Q. Is that what somebody from the Company said?

A. No, that is the manner in which they accepted it. I think they said, "You think we are going to pay such rates as that? It meant that.

Again, the Company asked—I don't remember how long that meeting lasted—but they asked for a considerable recess in order that they could go over both our original proposal and now our second proposal pertaining to wage rates. We brought out more or less of an understanding—we thought it was an understanding—we had gained at the first meeting, that these meetings would progress day by day until we could reach a mutual agreement. We didn't want to waste weeks and weeks negotiating, and the time of recess the Company asked for, to our mind, was delaying negotiations and could accomplish no good purpose. We also told them they had our first proposal several weeks and they had plenty of opportunity to study it in detail, and after all, there is only three pages of our wage proposal, and I thought we could go on in negotiations. The Company was insistent on recess and we finally agreed to it and we met—it was recessed until, I think it was around the 8th of January; I [149] won't be definite.

Mr. Dibrell:

January 10.

A. (continued) And we agreed to that but very reluctantly. It was take it or leave it, and we took it.

Q. Wait a second. We are going to have to distinguish, Amos, between your feelings of reluctance and what you said, and what the Company said. Did you state to the Company you were reluctant?

A. I stated in very certain words we didn't like it and wanted to meet day by day until we got a contract, but we did agree upon a "take it or leave it" basis upon January 10 for a second meeting. However, we again attempted to get an agreement with the Company that after January 10, they would meet with us day by day until the contract was negotiated.

Now, I am confused as to whether they actually gave it to me. My understanding is they gave their assurance they also wanted to negotiate day by day.

Q. So now, you are up to January 10?

Mr. Wilson:

May we go off the record a minute.

Trial Examiner Royster:

Off the record.

(Discussion off the record.)

Trial Examiner Royster:

On the record.

(By Mr. Wilson:)

Q. Mr. Stafford, you left off with December 15 meeting and at the end of that meeting you finally decided the next meeting would be January 10?

[150] A. If I may, I would like to back up with some statements made by the Company pertaining to our contract, at the first two meetings. The Company more or less accepted the contract without any comment except with relation to one paragraph dealing with leaves of absence. If I may, I would like to read that paragraph. It is just very short.

Q. Well, do you mean you want to read it into the record or to yourself?

A. I want to read it into the record.

Q. That won't be necessary.

A. I can read it to myself then?

Q. You can tell us, of course, what was said about that paragraph.

A. The paragraph states in effect the Company would grant the employees a leave of absence for undetermined period of time, and so forth. They brought out that was ridiculous. The Union agreed it was ridiculous, that the Company couldn't agree to such a paragraph, but the paragraph was to be used as an opening wedge to talk leaves of absence. We requested the Company at that time to give us their present plan. We explained to them that we had received rather conflicting information from their employees on their present plan and we didn't have an idea the Company would agree to a paragraph like that but we would like to have their plan and maybe it would be satisfactory. We wanted it written down. With the exception of that, talk on [151] there, I will proceed to January 10.

We went into the meeting to negotiate a contract. That was to be our first down-to-earth negotiations. Early in the meeting, without going into this thing paragraph by paragraph, as usual, we were discussing it, they receiving our ideas, we receiving their ideas, they wanted to start with the blue sky. He dictated a prerogative.

Q. Who?

A. Louis Dibrell dictated it. I am going to try to remember it word for word. "The Company retains the right to hire, promote, demote, discharge, or discipline employees for cause, arrange schedules of work, and thereby recognized by both Company and Union as the sole prerogative of management, and all decisions made by management would be final and binding." That isn't verbatim. That is in my own words. To all respects, that is what it was.

Q. Then as I understand it, you had this meeting on January 10 and then Mr. Louis Dibrell stated that that was something the Company wanted.

A. That's right.

Mr. Dibrell:

Mr. Stafford, would you like to use these notes and see if that will refresh your memory as to what was dictated? I am not asking you to change it, but just suggesting you look at it and see if it more nearly conforms.

(Document handed to witness by counsel.)

[152] The Witness:

I think this is correct, if I may read it—"The right to select, hire, to promote, demote, promote, discharge, discipline for cause, to maintain discipline and efficiency of employees and to determine schedules of work is the sole prerogative of the Company and the Company's decision with respect to such matters shall never be the subject of arbitration."

That is the statement as I remember it, to supersede what I said from memory.

That came as a complete surprise to the Union. The Union has in its course of negotiations through the years

with various companies come face to face with prerogative clauses, but this is the first time in my experience I came face to face with such a clause. We explained to management in the strongest language possible that the agreement by the Union to such a clause would take away the right given us under the Taft-Hartley Act of 1947 in respect to negotiation of hours, rates of pay and other conditions of employment. After all, if we agreed to such a paragraph, what else could we negotiate about?

The Company based their arguments on arbitration. We argued about grievances coming up and administration of the contract. The Company said they would never agree to have an outside, third party come in and tell them how to run their business. They expressed the firm belief that no arbiter in the country could give a just decision regardless.

[153] The Union told them there should be some way to police the contract but that maybe we could get together on a prerogative clause.

Q. Is this all at the January 10th meeting?

A. This is all January 10th, and principally, as I remember it, were the proposals given to us earlier in the meeting on the prerogatives of Company. We told Company we were prepared to grant prerogative to management of the business in the fields we have no business to enter, but in those fields where we were certified as the bargaining agent, we definitely expected and would demand to retain the rights granted us by law.

Louis Dibrell informed us there was no law in the land that could force any Company to go to arbitration. That is a difference of opinion on arbitration. There is other ways to settle Union grievances without arbitration procedure, such as was suggested, but that was the Company's position. They demanded their decisions in those matters would be final and binding.

The entire time in these series of negotiations was several days and we discussed Article II-A.

Q. So you had this discussion on January 10th?

Mr. Wilson:

Now possibly we can stipulate as to the next meeting. I believe you had meetings, January 10, 11, and January 12, is that correct?

Mr. C. G. Dibrell:

My notes reflect the twelfth was the [154] next meeting.

(By Mr. Wilson:)

Q. What is your recollection?

A. There were two or three days—they were consecutive. If we met on the twelfth, we met on the eleventh. They were consecutive meetings. I live in Port Arthur and I would not go over there and come back.

Q. Your testimony is your recollection is you met January 10, 11, and 12—three days consecutively—and you have told us about the January 10 meeting, and about the Company prerogative, and you apparently spent January 10 discussing that. What was the subject of discussion on January 11 and January 12?

A. As I remember, the discussion on all three days, with myself as Chairman of the Union Committee, I made repeated attempts to by-pass Article II-A.

Incidentally, that was 't numbered Article II-A at that time. You gave it to me verbally, I wrote it down in shorthand notes, and they were used in shorthand for discussion.

Q. Suppose we refer to the clause, for clarity, the clause which more or less later became known as II-A, right?

A. That's right.

Q. That is a fact, is it not, that the general subject matter of this particular clause dictated to you later was incorporated in a letter which is in evidence?

A. Dated January 17.

Q. And which has been referred to in your negotiations as [155] Article II-A?

A. That's correct. And substantially, it is unchanged, however, there are a few minor changes made by Company.

Q. Is it your testimony then that during the eleventh and twelfth, you made efforts to by-pass that clause with respect to Company prerogatives?

A. Repeated efforts.

Q. What do you mean by "repeated efforts" to by-pass it?

A. Numerous.

Q. What do you mean by "by-pass it?"

A. Lay it aside—discuss it later—go ahead and agree to some of the other portions of the contract which did not deal with prerogatives.

Q. What did the Company agree?

A. The Company would agree to by-passing the Article, setting it aside, and the penciled notes on this photostatic copy were placed there by me during the negotiations. We changed the word—I am bringing this—

Q. I think you are getting ahead of me because you didn't get that letter until January 18.

A. This is the original.

Q. My apologies. Go ahead.

A. These notations were placed there by me during this and subsequent meetings, in this attempt to table the prerogative clause, so to speak. But we couldn't go very far into the [156] contract in relation to promotions, demotions, seniority, rates of pay, conditions of employment we were running right into the brick wall of prerogative

clause. Finally, Mr. Dibrell stated to me, "If we can agree, if the Union will agree to accept that prerogative clause, I can guarantee you a contract within an hour or two." I came back at him and said, "Wait a minute—what kind of contract will I get? You state here you can change rates of pay anytime you want to, arrange any schedule any time you want without regard to shift differential, and what have you. You can demote, discipline, for cause; what are these causes? What are your working rules? Maybe if we had a copy of your working rules we could go ahead and negotiate." Well, the working rules were common knowledge.

Q. That is what your were told?

A. That they were common knowledge; the employees knew it. Part of the committee brought out they didn't know what the working rules were. We were deadlocked on II-A. We could take that or we could leave it, and during these discussions—

Q. Just a minute. You got deadlocked on II-A. Was anything said about take it or leave it?

A. The Company said they could not go further with the contract negotiations until we agreed to the prerogatives of management.

Q. As dictated by Mr. Dibrell?

A. That's right. Now during this set of meetings, on those [157] three days, Mr. Dibrell brought out, and we were talking about taking all of the prerogatives away from the Union for policing the contract, negotiating conditions, and so forth—that the law required them to deal fairly with the Union; if we had any disputes that would come up under our agreement, we could take those matters to the National Labor Relations Board. The only grounds we could bring a grievance was for Union activities or discriminating against a union member.

We brought out the National Labor Relations Board was not in the business of policing union contracts. That went beyond the National Labor Relations Board Act. This was a matter the two committees had to settle and agree on—machinery to negotiate the contract and enforce the contract from both sides of the fence. It was a mutual deal and the Board had nothing to do with that. He suggested to me we were deadlocked. I told him no, I didn't think we were deadlocked. He wanted to know if I thought he was bargaining in good faith. I couldn't say he hadn't bargained in good faith—we had just started, that we never could agree to the prerogative clause even if he gave us five hundred dollars a month increase in there, but there was nothing in there, to keep the Company from changing the classifications, fire everybody in the place, bring in a group of new people and even if we did get five hundred dollars a month for certain classifications that those weren't the classifications in question now.

[158] Under the prerogative clause they could set up an entirely new group of classifications and change rates of pay. We had the no-strike clause in our contract which would bind us to some extent in that, but Mr. Dibrell said that we could go back and do it through the National Labor Relations Board. It was also brought out at this meeting that under the Taft-Hartley Act, the Company did not have to recede from any position. That also went for the Union. Now if the Union wouldn't recede and the Company couldn't, there was only one logical conclusion.

Q. Who said that?

A. Louis Dibrell. When I say Company, I will refer to Mr. Louis Dibrell because he did ninety-nine per cent of the talking, and I will try to quote him, but that was what he said.

Q. What I had in mind, it was Mr. Dibrell and not you who said you were deadlocked?

A. Mr. Dibrell said we were deadlocked and I refused to agree we were deadlocked. We had just come into the meeting and we were both maneuvering for position—that is logical. I have seen some pretty wild things thrown in at the beginning, and I couldn't say they weren't negotiating in good faith, because this was routine. I was surprised when he said that we were deadlocked and I believe that at the end of the third meeting—

Q. You refer to January 12?

[159] A. That we would adjourn and study over the things, that the Company could study and the Union could study and come back with suggestions as to how to negotiate a contract embodying parts of the Company's prerogative clause. Never once did we tell the Company we wouldn't bargain on their prerogative clause. We told them repeatedly we were willing to bargain and change it, amend it to take things out of that clause which took away from our right as guaranteed by law. But no, their position, the company's position was—there it is; you agree to it. We couldn't agree; we are deadlocked and again I want to bring out the Union asked for an early date and again the Company asked for a later date. And through the arguments, the Company finally set a date, January 17.

Now, during this meeting about the prerogative clause, the Company had possession of our original contract. They had possession of certain things we had indicated we would agree to through this contract. They had possession of our complete wage schedule and up until that time would not discuss wages because they were not in position to do so, and would at a later time.

Q. You state they were not in position to do so. Are you stating that or is that what they told you?

A. They didn't tell me this. We just didn't discuss wage rates. We were back on the prerogative clause.

There was no discussion on wages. I asked for a complete counter-proposal in writing, to give me some indication of what the Company was [160] thinking of, an over-all picture of a contract. I wanted to get their feelings of every item we had. By going through the contract, we agreed to change one word here on the recognition clause: "received" to "recognize." We agreed on the no-strike clause, and to the first paragraph, and consistently all the way through, we agreed to eliminate Article 11, on examinations. The Company said they didn't want it, so we agreed to that, and the no-strike clause—that was the whole agreement.

Q. In other words, beginning with November 30, continuing to December 15, to January 10, 11, and 12, you have now enumerated those matters upon which you had reached an agreement.

A. That's right. The title, recognition, no-strike clause, and elimination of the physical examination by a doctor.

Q. Now, had there been anything said during these meetings up until this time, up to and including January 12, about whether or not the Company had to agree to any particular part of any contract?

A. No, the Union said they wanted to bargain and the agreement had to be mutually bargained out to the satisfaction of all parties, signed and sealed, and we tried to eliminate the impression we were going to hold out for the first contract, that we weren't insisting on the world with a fence around it, but were prepared to go all the way to get a contract to improve the relationship between Company and Union; and we brought out various rumors of unfair practices of Company. They assured [161] us that would be taken care of, that it would cease. We had gone through a heated campaign. We were going in there at that time and we so stated to the Company, we wanted to come in, be received, establish a platform, or a foundation for mutual respect and trust.

Q. All right. Now you have told us that on January 12 you finally agreed to meet February 17?

A. No, it wasn't February 17.

Q. I mean on January 17.

A. That's correct, January 17, the day of the famous letter, the counter-proposal. We didn't meet on January 17 because Mrs. Stafford became ill and I had to take her to a Doctor and I think I arranged by long distance with Mr. Dibrell to postpone the meeting to the following day, the 18th.

Q. What happened then?

A. The eighteenth—on the eighteenth, we came into the meeting, I think it was around ten o'clock in the morning—it could have been two in the afternoon—I don't know whether we came in the morning or afternoon, but it was on January 18. And I think Mr. Dirbell, as was his custom, reviewed the negotiations up to date, what had happened. Again we started on the prerogative clause. The Union asked for a written counter-proposal. We thought they were going to have one ready for us to study. It was indicated that they didn't have any such proposal and no such understanding. Anyway, we negotiated on through the [162] day, much in the same way. Each negotiation day is a repetition of the next day. We went in, tried to by-pass the prerogative clause, go back into the body of the contract, and we would get: no, no, no, the law would govern and the National Labor Relations Board would enforce the only reason we had for grievances.

Q. I know, but I think you will have to be a little more detailed, the Trial Examiner might not know about that meeting. Tell us what you mean by "no, no, no," and "the law will govern" et cetera.

A. For example, wages, the Wage and Hour law and the Walsh-Healey, whichever one applied to the office.

people, not over forty hours,—forty-cent minimum; up to forty hours there was a forty-cent minimum; over forty hours, time and one-half. That doesn't provide for time and one-half for over eight hours in a day. The law would govern that. The Company could agree to that.

Q. The law would govern and Company would agree?

A. Yes.

Q. Was anything said that there would be an agreement to anything the law didn't require.

A. No, they would agree to only what the law would require.

Q. Was that said? Tell me what was said in respect to doing what was required by the law to do?

Q. [A.] It was brought out in this way: Under the prerogative clause—

[163] Q. Let's get to Wages and Hours and what, if anything, was said by the Company with respect to doing what the law required.

A. They had an existing wage scale in effect. Everybody was happy in the American National; they couldn't use any more money, the Company wasn't in position to pay any more money; they met the requirements of the law; and that there was no law to require them to raise wages.

\* \* \* \* \*

[164] (By Mr. Wilson:)

Q. It is my recollection, Mr. Stafford, we left off at the January 18 meeting, and I believe you have told us—correct me if I am wrong, that you had asked again on that day for a complete set of counter-proposals. Am I correct? Had you already told us about that?

A. Yes, but if it is permissible, could she read off the last words there so I could gather up. I don't want to

repeat in the record the last two or three minutes of my talk.

Trial Examiner Royster:

You go ahead.

(By Mr. Wilson:)

Q. Tell us about the January 18 meeting.

Trial Examiner Royster:

Go ahead and testify from there.

(By Mr. Wilson:)

Q. You recall you were—

A. Due to my wife's illness, I had to postpone it and I did, through a telephone conversation with Mr. Lewis Dibrell, and he consented to postponing the meeting one day. We entered the meeting and we talked, not II-A, we talked prerogative clause. Mr. Dibrell informed me that the Company had taken that position and they thought it was fitting and proper that the Company[165] be allowed to exercise all prerogatives even to promoting, demoting, discharging, disciplining the employees and he again reiterated that it was no place for a third party or arbiter. The Union reminded Mr. Dibrell that it was our understanding of the agreement made at the prior meeting, on January 12, that they would have for us a complete counter-proposal to the sections of our proposed agreement we had submitted, which would incorporate certain things that the Company might be willing to grant, as we had discussed no formal agreement but statements had been made they would agree to. We didn't get that until in the afternoon.

Q. To what?

A. To the counter-proposal, the counter-proposal offered by the Company. The meeting was rather heated, charges

and counter-charges were thrown at each other as to whether or not they were bargaining. They stated they were because the law did not require them to recede in any way from their position. They were referring to Article II-A, the prerogative clause, and also referring to vacations, sick leave, rates of pay, any other thing in the contract we had asked for. As I said, the meeting was heated and we asked them how about a counter-proposal. Now, I am referring back to the meeting, on the prerogative clause.

I wanted from the Company a complete picture as to how this prerogative clause will fit into seniority, wage increases, [166] and so forth, demotions, lay-offs; I said "I don't have anything. You say your present policy. I don't know what your present policy is." So the meeting was about to adjourn and Mr. Dibrell, I think, he went into another office. I am not sure, but he handed me across the table the letter of January 17.

Q. Wait, and go back a little bit. What was the reply of the Company, if any, when you asked for this complete set of counter-proposals? Did they say they would give it to you or did they refuse?

A. They refused to give it to me.

Q. At your January 18 meeting?

A. Yes.

Q. Then you tell us there came a time near the close when he went into another office and came back with a letter?

A. He handed me the letter of January 17 after I stated to him that his definition of bargaining was entirely different from my definition of bargaining and I invited him for both of us to go look it up in Webster's Dictionary, for bargaining to me meant trading; and actually, in discussing the contract, I gave a little; he gave a little; we gradually come to a point where we agree. He reiterated

the Company's position was final—that was it—the law didn't require him to recede from that position, and so forth.

Q. The Company's position on that was final?

[167] A. The prerogative clause.

Q. Go ahead.

A. That also went for the other topics, rates of pay, hours of work, everything we discussed in the meeting.

Q. What had you been discussing about wages? What did the Company at the January 18 meeting state was its position with respect to wages?

A. They could not and were not in position to offer the Union anything other than what was presently in effect.

Q. They said that?

A. That's right.

Q. Did they say their position on that was final and would not be changed, or didn't they?

A. They stated that was their position and they did not have to, under the law, recede from that position.

Q. Was anything said about whether they would recede from that position?

A. They didn't say they would recede; they definitely made a point they were not receding, they didn't have to, why should they recede.

Q. What was their position with respect to hours?

A. Wasn't the present hours satisfactory? They went to work at eight, quit at five, had a certain time off for lunch. I told them yes, it was satisfactory, however at that time—excuse me, I don't think it came up at that time.

[168] Q. Now what time of the day, approximately, did the January 18 meeting begin, in the morning or afternoon, do you recall?

A. I won't say positive, but I believe it began around ten o'clock in the morning. We had a lot of arguments over the ten and two in these discussions—I come over

from Port Arthur and I didn't want to come over at two o'clock and negotiate. I think we began at ten.

Mr. Dibrell:

We began at ten that morning and worked until around noon or 12:30, and started back in around two in the afternoon. That is by recollection.

The Witness:

That is the way it was.

(By Mr. Wilson:)

Q. That refreshes your recollection?

A. That's right.

Q. And about what time of day was it they handed you the January 17 letter, which is General Counsel's Exhibit 10?

A. That is a hard question to answer because I didn't look at my watch. I will answer that question this way:

It was before quitting time, because I requested permission of the Company for members of the Committee to meet with me in the Hotel to go over the counter-proposal.

Q. About what time?

A. It was prior to five o'clock and after two o'clock, I would say roughly three-thirty to four-thirty.

Q. So you received the counter-proposal. Was anything said at the time—counter-proposal—you received the January 17 [169] letter. Was any discussion about the letter at that time?

A. We received the counter-proposal. I stated I didn't think they were bargaining, and I thought it was their duty to submit this counter-proposal and I expressed the fact that I was going to have to go to the National Labor Relations Board in Fort Worth to find out whether or not they would have to give me such a counter-proposal. I

was closing the meeting out because there was nothing being accomplished. All we could talk about was the prerogative clause, company's position, and the law, and we were getting nowhere fast. I couldn't agree they were bargaining at that time in good faith. I referred back to the statement Mr. Dibrell had made previously and earlier in the meetings, where he himself thought we were deadlocked. Now, I was agreeing with Mr. Dibrell—we were definitely deadlocked. And I didn't know what the next move was. I accused the company then of not bargaining then in good faith. They weren't bargaining—

Q. We are not interested in any argument you might advance as a matter of your own opinion. If you said these things to Mr. Dibrell, tell us, but don't give us your opinion.

A. I told these things to Mr. Dibrell.

Q. What?

A. That I was going to the Board.

Mr. Dibrell:

Just a moment please. Mr. Examiner, I have no province nor right to suggest how Mr. Wilson conducts [170] his case, but I do point out I am not making any objections whatsoever to the way Mr. Stafford undertakes to state his position, but—

Trial Examiner Royster:

At the same time, I want to know what Mr. Stafford said at these conferences as distinguished from what his reaction is.

The Witness:

Mr. Trial Examiner, I may state it wrong. The things I said, to my knowledge and belief, were actually stated to Mr. Dibrell. I am in the position of arguing with Mr. Dibrell.

(By Mr. Wilson:)

Q. You are restating what you said?

A. That's right.

Q. You just continue, and I will help you make it straight these are the things you said to Mr. Dibrell.

A. After I made the statement that I was going to the Board, that they were not bargaining, and so forth, he handed me the letter of January 17 which he stated was the company's counter-proposal as requested by me. I then requested him for a recess until the following morning, requesting permission of the Company to excuse the Committee from work for the rest of the afternoon, and we went over to the Hotel and went over that.

Q. And you made arrangements to meet the following day?

A. Made arrangements to meet the following day.

Q. January 19?

A. January 19.

[171] Q. And you met on January 19?

A. Yes, sir.

Q. All these meetings had been in the offices of Dibrell, Dibrell and Greer?

A. Yes, sir, with the exception of the first meeting.

Q. Tell us about the meeting of January 19. What was said, if anything, about paragraph II-A.

A. In the letter of January 17, the Company—

Q. We have got the letter of January 17 in evidence. We know what the Company said in that letter. You tell us what was said about that letter, if anything. Did you say anything to Mr. Dibrell about II-A in that January 17 letter, did the Company say anything to you?

A. The major portion of the meeting on January 19 was spent in the discussion now of the prerogative clause which becomes Article II-A of the counter-proposal of the Company dated January 17.

Q. You say the major portion of that day was spent on II-A?

A. Only a little discussion was had on the other various parts of the contract, where we tried to by-pass the Article. We went over the letter very slowly and in detail, asking the Company to explain. As we went through, we indicated what we could agree to and could not, still trying to find out a foundation where we could go and get around the objectionable part of the II-A. In the prerogative clause, the first paragraph [172] has been changed, elaborated on. We told them, without any fanfare or any argument in it, we would agree to it as a very strong prerogative clause.

Q. You would agree to?

A. The first paragraph of II-A. In the second paragraph, where the Company was asking us to give up our rights to bargain, it was worded more or less in the same manner as the prerogative, given to us previously, verbally, and we could not agree to that.

Q. What you have just told us is what you said to him?

A. I am still talking to Mr. Dibrell. It may not be exactly the language but these are the points we made. He told me the Company had the same rights as the Union, to ask for anything. He brought up this was the Company's position and they would insist and they did insist it was their right to insist that we agree to it, and without the agreement of Article II-A, there could be no contract.

Q. Without an agreement upon the inclusion of Article II-A, there would be no contract?

A. That's right.

Q. Was anything, did the Company characterize in any fashion II-A? Did they refer to it as being any particular part of the contract?

A. They wanted it to be included in the paragraph, this II-A referred to the original contract, Article II or

Section II, [173] and this "A" is a paragraph that comes into our contract that was to become a part of our proposal.

Q. I don't believe you understood. I am endeavoring not to lead you, in a fashion. Was anything said about anything being the "meat on the contract?"

A. Mr. Dibrell said, "This is the meat of the contract. You have to agree to it, and if we can agree to it, we can get a contract in short order."

Q. What was the "meat of the contract?"

A. Article II-A.

Q. So you discussed II-A throughout the day, more or less, or tell us how long did the meeting last? Do you know when it started and when it ended?

A. The meeting started, according to my best recollection, it started in the morning, and I am sure it lasted up through the afternoon because we never did break off during the middle of the day.

Mr. Dibrell:

With only one or two exceptions, as I recall it, Amos, all the meetings started at ten and had two sessions to them. Once or twice we started in the afternoon rather than in the morning, but as a general rule it was in the morning.

The Witness:

We met usually around ten and adjourned around five maybe a few minutes before or after, but those hours are more or less correct.

(By Mr. Wilson:)

Q. Now, as I understand your testimony, you [174] have said that Company said you would have to agree, or insisted upon II-A?

A. It was the condition of a contract.

Q. Now, how often, if it was more than once, did the Company state that or something similar to that in the course of the January 19 meeting, did they only say it once or did they state it more than once?

A. I can't testify as to the number of times. I will say they said it several times.

Q. You mean subsequent to January 19?

A. That's right, after January 19, as far as numbering the times, I can't do that.

Q. When you said it was a condition, did they say it was a condition of the contract or a contract?

A. To get a contract, an agreement must be reached and must be made by the Union to include Article II-A as the Company's prerogative clause.

Q. Was there any discussion as to whether or not II-A could be changed in any way?

A. The Union suggested—I can't recall the number of suggestions—various and sundry ways of taking out the teeth from II-A, tying it back into arbitration, leaving with Company the prerogative to manage its own business and customary management; we don't have any right there; eliminating a word, changing a word—we made a concrete offer; to get an offer to agree, [175] subject to the terms of this agreement. They said no, it had to be agreed to as presented by Company.

Q. All right, tell us whether or not anything, have you told us substantially what was discussed at that January 19 meeting?

A. I am not too sure about my date. I have mentioned that I told the Company at a prior meeting we had to go to the Board. The Board came into the conversation either at this meeting or the next meeting, and I can't say which.

Q. I think possibly I can refresh your recollection by showing you General Counsel's Exhibit No. 11, which is a letter that was written on January 19. Does that refresh

your recollection as to anything further that was said at the January 19 meeting?

A. At the end of the meeting, we got into another argument over the definition of bargaining. I stated to the Company they were not bargaining with me in good faith, trying to take away my rights as granted under the Taft-Hartley Act of 1947, and I was going to be frank about it; I was going to the Board and get a definition of bargaining, and not only that, I was going to consult some attorneys in Dallas to find out about it. And so far as I knew at that time, I would agree we were deadlocked and there was no use for any further meetings. Mr. Dibrell called in his secretary and dictated the letter known as Exhibit No. 11 here, dictated a letter to me stating that I said we were deadlocked and they would meet with me on [176] February 7, and I took the letter and the meeting adjourned.

Q. Did you agree to meet with them on February 7?

A. No.

Q. Now, we already have in evidence, and I am only bringing in this for the Trial Examiner's information so he can follow the trend of this—the charge was filed by you on the twenty-eighth?

A. It is signed by Wilson. I was there.

Q. In any event the charge was filed. Do you happen to have in your files a copy of a letter which I believe was written by you on January 31 to the Company, with reference to a meeting on February 7?

(Document handed to Counsel.)

Mr. Wilson:

"I will have this marked General Counsel's Exhibit No. 16.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 16, for identification.)

Mr. Wilson:

I propose a stipulation, Mr. Dibrell, that General Counsel's Exhibit No. 16 for identification is a copy of a letter written, mailed to American National Insurance Company by Mr. Stafford on or about January 31, 1949.

Mr. Dibrell:

Stipulation is agreed to.

Mr. Wilson:

I offer General Counsel's Exhibit No. 16.

Trial Examiner Royster:

It is stipulated such a letter is received by the Company?

[177] Mr. Dibrell:

Yes, sir.

Trial Examiner Royster:

Without objection, General Counsel's Exhibit No. 16 is received.

(The document heretofore marked General Counsel's Exhibit No. 16, for identification, was received in evidence.)

(By Mr. Wilson:)

Q. Now, pursuant to that letter, did you or not have a meeting with Company on or about February 7?

A. Yes, we had a meeting on February 7—I think it was on the seventh. We had a meeting the early part of February. I think it was the same date he suggested in his letter of January 19.

Q. All right. Now, will you tell us what was discussed, as best you can recall at the February 7 meeting, which was the first meeting you had after you filed the charges?

A. Article II-A and there was a cross examination by the Company of myself and Wilson as to why we filed charges against them.

Q. You say a cross examination?

A. By the Company, of Wilson and myself as to why we filed the charges.

Q. Tell us what was said. You characterized it as a cross examination. What did they say?

A. They wanted to know why and on what grounds, what was the law, and our answer was at the proper time we would explain all those things to them if and when the Board set the case [178] and brought it to trial. We weren't there to discuss why we filed an unfair labor practice charge, but we were there to get a contract between the American National Insurance Company and the Employees of the American National Insurance Company, as covered by the certification.

Q. Did you discuss anything else other than ~~why~~ you filed the charges and what you were there for? I refer you to II-A, for example, did you discuss II-A?

A. Now, the meetings after January 18, 19, and up until the time we went to the Board and filed the charges with the Board—I have told you that in testimony. That same testimony can fit every day as to discussions of Article II-A and the other provisions of the contract. It was rehashed at each meeting. Any unusual happenings there, I can't recall them; I can't recall anything—it was all based on what law required the Company to grant a concession to the Union; what law required the Company to grant a raise in wages, to give better sick leave plan, what law required the Company to negotiate an arbitration clause with the Union. Why was it against the law for them to

insist on Article II-A; that was the conversation and it was over and over and over again. The Union trying in every way possible, advanced numerous proposals, counter-proposals, counter-counter-proposals, and so forth, and suggested, and finally at the end of the meeting, we just gave up and we asked the Company—we told them we were at our wits end, couldn't [179] suggest any other changes or modifications, and the Company couldn't agree with us on anything; we couldn't get a basis at all; every time we tried we ran back into Article II-A. Again Mr. Dibrell would say that was the meat of the contract; that was the contract, if we could agree to that, we could have a contract within an hour—I think he said one time. I can't dispute it.

If we did agree to II-A, there would be no reason for any other part of the contract. It was again the law. That was our position and we so stated emphatically over and over again.

Q. What you have said to us was said at the February 7 meeting, and in substance, at other meetings after that?

A. That's right. Now we get to the point where Company refused to accept our invitation for them to take the initiative in trying to get a contract. We couldn't agree to Article II-A, because that would take our bargaining rights or privileges away from us. Mr. Dibrell told me that if I was an attorney, I could understand what he was talking about. So, in the meeting—before I go to that, I want to get the working rules.

In an attempt to get a contract at one of our later meetings in February, or it was in March, before I went to St. Louis, we were talking Article II-A and the effect it would have on a seniority plan, demotion, lay-offs, and everything pertaining to the Union contract, and they kept

bringing in the working rules and the integrity of the Company. They wouldn't do [180] so and so, wouldn't discriminate against the Union, or we could come back to the Board and file charges.

Q. They mentioned the integrity of the Company? What did they say about the integrity of the Company? What did they say you should expect because of the integrity of the Company?

A. The American National Insurance Company, they stated to me, "We would never stoop to discriminate against any of our employees." If a raise was due them, they themselves would put that raise into effect. They didn't need a Union to tell them when. They agreed the step-ups as submitted in their letter, the counter-proposal—I say it is a letter, their present existing wage promotional plan—that would be carried out to the letter.

Q. When you are talking about the presently existing wage promotional plan, that is Anico Wage Promotion Plan that was made a part of the January 17 letter, right?

A. That's correct.

Q. So, was there some discussion in regard to rules in connection with—

A. If an employee passed a test, that was a rule pertaining to this plan, as I understood it, going from "A" classification to "B" and from "B" to "C". The Company has certain intelligence tests or certain—I don't know if they are intelligence tests or not—that they give the employees, and every employee is required to pass that test. We tried [181] to get some information as to what the tests consisted of and all we could get from the Company was it was prepared by the Columbia University and was given by their Personnel Department. I think that

was a Mrs. Yuhr. She graded the tests and gave the rules to the people and would tell them whether or not they passed or failed. The Committee brought up that some of the people thought that they passed but Mrs. Yuhr thought they had failed. Inquiries were made by the Union as to whether we could see these papers. They were confidential, we were informed. We inquired of the Company if we could have sample copies of the questions. That was confidential and they couldn't violate the confidence, the confidence of the Columbia University who put out the questions. But the Company would administer that in a fair manner, and if they had to wait for an opening—the "A" classification had to wait for an opening in the "B" classification, and the same applied in the "C" classification. We brought out in the course of those meetings an employee starting at \$85.00 a month could work four years and be automatically increased to \$110.00 a month. But under the rules of the Company, this employee could be sent time after time up to the Personnel Department to take the tests and be informed they had failed and be retained on the payroll for the term of their employment, be it five, fifteen, or fifty years, and still remain at the \$110.00 a month. We suggested maybe the tests were all right but why couldn't the Union see [182] the results of the tests, see the standard answers and check the grading and be able to process a grievance. They said it was too confidential, a Company prerogative, Article II, Section II-A.

Q. And in connection with, as I understand it, you asked the Company to be given the right to check these tests, to check the Company's operation of these tests, promotions, their wage schedule business, and the Com-

pany said it was their prerogative. What was said about the integrity of the Company? What were you supposed to look to?

A. The Company would see to it no harm would be done and if an employee passed it, they wouldn't say they didn't. Well, I am not questioning their honesty. I just want to check. After all, I may trust you with all the money in the world, but when I give it to you, I want to count it out.

He came back with: If I was an attorney. The point I am bringing out, I brought in an attorney to negotiate for us some time in May, Nile Ball of the firm of Mullinax, Wells and Ball of Dallas, Texas.

Q. Some time in May?

A. Yes. All the rest of those meetings followed the identical pattern; it may have been said in a little different words, the Company resting their case on the Company did not have to recede from its position and the Union did not have to recede from its position. No one had to do any collective bargaining [183] and unless the Union would accept the Article, sick leave, wage rates, conditions of work, and so forth, we were wasting our time maybe.

Q. All right, when were you first told by the Company—I believe you have already testified the Company stated they were unable to raise wages. Have you said that?

A. No, I haven't said that.

Q. Tell us what the discussion was about raising wages.

A. In the preliminary talks on wages, some argument was made by Mr. Mosele due to the complexity of the Company and the way its contracts were tied in with life contracts on insurance. They write you so much insurance

on so much; you pay until you die and they pay you off. The Company Committee stated they were different from an Oil Refinery, Tin Smelter, or any other, or one of the Machine Shops down in Galveston here where the Union came in and negotiated a wage increase. That wage increase could be passed on to the consuming public. In an Insurance Company, it was governed by law. I am not trying to pose as an Insurance Expert. I am giving you their argument to me, and I am trying to quote it.

Q. That is what they said to you?

A. That's right. Their rates ~~were set~~ by law. Certain reserves had to be set by to cover their life contracts, and they would not take it out of profits, and the wage rates as paid by them at this time were the rates and were the only offer [184] the Company would make to the Union. That is, we accept the rates that have been in effect from time past. I don't know when it was put in effect but it is in effect at the present time.

Q. All right. They told you they would not pass, could not pass any wage increase along to the public?

A. It was impossible under the law and they would not absorb a wage increase. Now, in that period of time, I received some information—I can't divulge the source of it—it is reliable.

Q. Well, we are not interested in what—

A. I want to state the figures on this.

Q. You can tell us anything you said to Mr. Dibrell. Did you say this to Mr. Dribell?

A. I told Mr. Dibrell and Mr. Hosele—it was some figures on their 1947—this is 1949—

Mr. Dibrell:

You mean that financial statement of the policy-holders?

A. The one I quoted to you where you made twenty-nine or twenty-seven million dollars.

(By Mr. Wilson):

Q. That was 1948?

A. I received another one in the meantime from the Company. This statement brought out they wrote one hundred thirty-five million dollars worth of new insurance during the year, and they had increased their capital assets by twenty-seven million [185] dollars. Of course, this wasn't a detailed financial report, but the increasing of the financial assets after the payment of all claims, all bills due, salaries and all expenses in connection with the Company, they were in a position to increase their assets by twenty-seven million dollars. And I figured, and I told them so, they could grant a substantial wage increase to their employees and take it out of profit, and it definitely would not affect their financial standing. There were twenty-seven million dollars they made in one year balanced against the one hundred thirty five million dollars worth of new insurance from writing new life contracts. In a period of a little over five years, they could cover the total liability assumed by the Company by writing the new business, whereas these contracts ran on for life. They said I didn't understand the financial workings of an insurance company. That couldn't be done. I brought out, of course I didn't have any figures but I had a rough estimate; I had my original wage rate I handed to them, and roughly figured it would cost four hundred thousand

dollars a year if they granted my original proposal. And, deducting that from the twenty-seven million some-odd dollars, would still leave over twenty-six and one-half million increased assets, which is just a drop in the bucket as far as their financial standing in the insurance field was concerned.

Q. Was there any discussion about how much money was paid to stockholders during the year?

[186] A. They refused to give me that information.

Q. Didn't there come a time when you got a financial statement of that?

A. That's right. I got that after the sixth of July, this month, after I returned from my vacation.

Q. Before I come to that, when did you first ask for a financial statement?

A. Now, I want to say it was some time during the meetings in January or February. I can't remember when I asked for a certain piece of information from the Company.

Q. The best of your recollection, it was some time in January or February?

A. I asked for it on several occasions and when it was I can't say, except I asked again in May and got it in July.

Q. When you asked for it back in January or February, what did they say?

A. I don't remember what they said. I didn't get the information.

Q. Well, without recalling any exact words, can you tell us whether they agreed to let you have it?

A. No, they didn't agree to give it to me. I also asked them for payroll information, service records, the time the

people went to work, the classification they were in; and they refused to give it to me.

Q. When did you ask them for that?

[187] A. About the same time.

Q. And you say they refused to give you that?

A. They said it couldn't be done.

Q. Did you finally get what you asked for?

A. Yes.

Q. When did you get it?

A. After the sixth of July. I returned from a trip after the sixth of July and had the information.

Q. Did you in the course of negotiations refer to that list as a roster of employees?

A. Yes, I asked for a seniority roster.

Q. Now, take your time and try to think back as to about when you asked for that seniority roster, when you first asked.

A. I can't remember exactly when I asked for it but I will say it was during those latter meetings in January and the meetings in February—it could have been March.

Q. What did they say to you when you first asked for a seniority roster?

A. The law—there was no law that required them to furnish us such a list.

Q. And did they say they would give it to you or not?

A. They would not because the law did not require them to furnish it.

Q. Now, how often did you ask for a seniority roster?

A. On numerous times. I wouldn't say how often; the request [188] wasn't made once, twice, or three times—it was made more than that.

Q. And did the answer of the Company vary in any substantial manner from that you have told?

A. The answer was no.

Q. And did they again give a reason for their refusal to give you the seniority roster?

A. Not on every occasion, no. There were various and sundry reasons. It all boiled down that they didn't have to and they wouldn't.

Q. Did there come a time when you did get the seniority list?

A. Yes, sir, I received it after the sixth.

Q. Do you have in your files the financial statement you said you got some time after July and the roster?

Mr. Wilson:

May we have a recess?

Trial Examiner Royster:

We will have a few minutes recess.

(Recess.)

Trial Examiner Royster:

On the record.

Mr. Wilson:

Will you please mark these for identification?

(Thereupon the documents above referred to were marked General's Exhibits Nos. 17 through 27, inclusive, for identification.)

Mr. Wilson:

I propose a stipulation: General Counsel's Exhibit 19 for identification is a copy of a letter dated July 8, 1949, which the Company sent through Dibrell, Dibrell, and [189] Greer to Messrs. Mullinax, Wells & Ball, counsel for

the Union Negotiating Committee, and which was received by Mullinax, Wells & Ball; and General Counsel's Exhibit No. 17 is a photostatic copy of at least part of the Annual Statement for the year 1948 of the American National Insurance Company and which is described in General Counsel's Exhibit No. 19; and that General Counsel's Exhibit 18 is payroll information as of May 27, 1949, which is also described in General Counsel's Exhibit No. 19, the letter.

Do you so stipulate?

Mr. Dibrell:

Yes. I would like to propose some additional information.

Mr. Wilson:

Certainly. I would like to point out that the General Counsel is desirous of having introduced into evidence any and all correspondence which has passed between the Company and the Union. I am not certain that I have, in fact, I am quite sure I have not copies of all of the correspondence. So, to the extent that the Company has any correspondence that I don't have, I will appreciate it if the Company will offer it at such times as it desires.

Mr. Dibrell:

I propose at this time an addition to the stipulation, at least, of the exchange of correspondence between Ball and our office that led to the mailing of these things. I don't know that any purpose would be served to go through all the rest of it and go through and get anything else [190] out although we will get it out as we find it, although we do propose this.

Trial Examiner Royster:

Suppose we be off the record for this. Off the record.

(Discussion off the record.)

Trial Examiner Royster:

On the record.

Mr. Dibrell:

We propose—Respondent proposed additions to the stipulation proposed by General Counsel, as follows: On June 1, 1949, or rather under date of June 1, 1949, Mr. Nile E. Ball, of the firm of Mullinax, Wells & Ball, who represent the Union, sent to us a letter, of which this is a copy, which you will please mark in respect to this stipulation.

Trial Examiner Royster:

Which is General Counsel's Exhibit No. 28.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 28, for identification.)

Mr. Dibrell:

That letter was received by us and on June 14, we answered that letter with a letter addressed to Mr. Ball, of which this is a copy, which is to be marked.

Trial Examiner Royster:

How are you going to mark them? Mark them all your exhibits, Mr. Wilson?

Mr. Wilson:

That is agreeable to me.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 29, for identification.)

[191] Mr. Dibrell:

Enclosed with General Counsel's Exhibit No. 29, just marked for identification; was first, a roster of American National Employees within the bargaining unit, as had been requested in the first sub-division of Mr. Ball's letter of June 1, General Counsel's Exhibit No. 28.

Mr. Wilson:

I am afraid, off-hand, I can't agree with you. Of course, subject to correction, it is my understanding that the roster which you furnished with that letter was not the roster as requested. It did not contain the names.

Mr. Dibrell:

Enclosed was a roster which was intended to meet the request contained in the first paragraph. Also enclosed was this document which you will mark General Counsel's Exhibit No. 30, which was intended to meet with the requests contained in the second sub-numbered subdivision of the letter of June 1.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 30, for identification.)

Mr. Dibrell:

Also enclosed with the letter of June 1—I mean with the letter of June 14, G. C.—29, was this, which you will please mark for identification, which was intended to meet the requirements in the request contained in the third numbered section of Mr. Ball's letter of June 1.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 31, for identification.)

Mr. Dibrell:

Further, that under date of June 13, 1949 [192] Mr. Ball addressed a letter to us, which has been heretofore marked General Counsel's Exhibit No. 26, in which was requested a roster, with additional information to that contained in the first one sent him. That under date of July 8, 1949, we addressed a letter, of which this is a copy—has been marked General Counsel's Exhibit No. 19, has been heretofore marked for identification, with which letter was enclosed General Counsel's Exhibit 17 and General Counsel's Exhibit 18.

Mr. Wilson:

I so stipulate.

Trial Examiner Royster:

Your stipulation is General Counsel's Exhibit No. 17 through—

Mr. Wilson:

But we haven't stipulated about quite a few in between there.

Trial Examiner Royster:

I see. With respect to those letters and enclosures which have been specified in the stipulations, the stipulation is that the letters were written and that they were received in due course of mail after writing, with enclosures, where there is any reference to enclosures.

Mr. Wilson:

It is so stipulated.

Trial Examiner Royster:

Very well. The stipulation is accepted.

Mr. Wilson:

I offer in evidence the letters concerning [193] which we have just stipulated.

Trial Examiner Royster:

Is there any objection?

Mr. Dibrell:

No.

Trial Examiner Royster:

Without objection, General Counsel's Exhibits Nos. 17, 18, 19, and others to which reference has just been made in the record, is received. Off the record.

(Discussion off the record.)

Trial Examiner Royster:

On the record.

The offer and acceptance of General Counsel's Exhibits which have been discussed and ruled upon just prior to this had reference to General Counsel's Exhibits Nos. 17, 18, 19, 26, 27, 28, 29, 30, and 31.

Mr. Dibrell:

We have no objection.

Trial Examiner Royster:

They are received in evidence.

(The documents heretofore marked General Counsel's Exhibits Nos. 17 through 19, and 26 through 31, inclusive, for identification, were received in evidence.)

Mr. Wilson:

I propose a stipulation.

Mr. Dibrell:

May I suggest that we take a recess while my brother tries to get our correspondence out and while Don is getting his out, and leave it together and see what it is?

Trial Examiner Royster:

Of course, Mr. Wilson is entitled to put in what he has.

Mr. Wilson:

I wouldn't think of being contentious.

Mr. Dibrell:

I understood him to say he was trying to get [194] everything in.

Trial Examiner Royster:

All right. Let's be off the record and you get them together. Off the record.

(Discussion off the record.)

Trial Examiner Royster:

On the record:

Mr. Wilson:

General Counsel proposes to stipulate that General Counsel's Exhibit No. 20 for identification, is a letter dated March 3, 1949 written by Louis Dibrell, as Chairman of the Contract Committee of the American National Insurance Company, to the Contract Negotiation Committee of Office Employees International Union, Local No. 27, American Federation of Labor, which letter was received by the Union Committee shortly after March 3, 1949.

Trial Examiner Royster:

It is so stipulated.

Mr. Dibrell:

Yes.

Trial Examiner Royster:

Very well.

Mr. Wilson:

General Counsel so stipulates General Counsel's Exhibit No. 22 for identification is a letter dated April 16, 1949, written by Louis Dibrell to Mr. C. A. Stafford, received by Mr. Stafford shortly after April 16, 1949.

Mr. Dibrell:

It is so stipulated.

Trial Examiner Royster:

Very well.

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 23 for identification is a copy of a letter written by C. A. Stafford to the Contract Negotiation [195] Committee of the Company, attention Mr. Louis J. Dibrell, which letter was received by Mr. Dibrell shortly after March 7, 1949.

Trial Examiner Royster:

That being the date of the letter?

Mr. Wilson:

Yes.

Mr. Dibrell:

It is so agreed.

Trial Examiner Royster:

Very well.

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 21 for identification is a letter dated April 1, 1949, written by Louis Dibrell to C. A. Stafford, Office Employees International Union, which letter was received by Mr. Stafford shortly after April 1, 1949.

Mr. Dibrell:

It is so agreed.

Trial Examiner Royster:

Very well.

Mr. Wilson:

I ask this be marked General Counsel's Exhibit 32 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 32 for identification.)

Mr. Wilson:

I propose to stipulate General Counsel's Exhibit No. 32 for identification is a letter dated February 26, 1949, to Contract Negotiation Committee of American National Insurance Company, attention Louis Dibrell, which letter was received shortly after or possibly on February 26, 1949.

Mr. Dibrell:

It is so agreed.

Trial Examiner Royster:

Very well.

[196] Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 24 for identification—

If I made any offer with respect to General Counsel's Exhibit No. 24 for identification, I am by-passing it.

Trial Examiner Royster:

All right.

Mr. Wilson:

Will you please mark this for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 33, for identification.)

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 33 for identification, is a letter dated May 12, 1949 written by C. A. Stafford to Louis Dibrell, as Chairman of the Negotiating Committee of the Company which letter was received by Louis Dibrell shortly after May 12, 1949.

Mr. Dibrell:

It is so agreed.

Trial Examiner Royster:

Very well.

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 25 for identification purports to be

the Rules and Practices Governing Employees of the Home Office of American National Insurance Company, Galveston, Texas, which Exhibit was, that is, General Counsel's Exhibit 25 for identification was enclosed with the April 1 letter which has heretofore been marked General Counsel's Exhibit No. 21 for identification.

Mr. Dibrell:

It is so agreed.

[197] Trial Examiner Royster:

Very well.

Mr. Wilson:

Will you please mark this for identification?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 34, for identification.)

Mr. Wilson:

General Counsel proposes a stipulation that General Counsel's Exhibit No. 34 for identification, insofar as any typing on it is concerned, is a proposed Article of Agreement Between the American National Insurance Company and Office Employees International Union Local No. 27 of the American Federation of Labor, and the original or another copy of which was given to the Company by Mr. Nile Ball, Counsel for the Union.

Can you gentlemen assist me with the approximate date that happened?

Mr. Dibrell:

During the course of a meeting held May 30.

The Witness:

Prior to May 30. May 30, we returned to talk wages.

Mr. Dibrell:

May 20.

Mr. Wilson:

On or about May 20.

Mr. Dibrell:

The nineteenth, my brother says.

Mr. Wilson:

On or about May 19, 1949.

Do you so stipulate, sir?

Mr. Dibrell.

It is agreeable.

Trial Examiner Royster:

All right.

Mr. Wilson:

Since I am on General Counsel's Exhibit No. 34 [198] for identification, I will stick with it and offer General Counsel's Exhibit No. 34 for identification in evidence, it being understood, I am offering only the typewritten material and I am not offering any markings, whether they be in the form of writing or just lines appearing in pencil, red pencil, or possibly ink.

Mr. Dibrell:

No objection.

Trial Examiner Royster:

Without objection, General Counsel's Exhibit No. 34 is received.

(The document heretofore marked General Counsel's Exhibit No. 34, for identification, was received in evidence.)

Mr. Wilson:

I offer in evidence General Counsel's Exhibits Nos. 20, for identification, General Counsel's Exhibit No. 22 for identification, 23 for identification, General Counsel's Exhibit 25 for identification, General Counsel's Exhibit No. 32 for identification, General Counsel's Exhibit No. 33 for identification, and if I haven't mentioned General Counsel's Exhibit No. 21 for identification I offer General Counsel's Exhibit 21 for identification.

Mr. Dibrell:

To none of which is there any objection.

Trial Examiner Royster:

Without objection, General Counsel's Exhibits Nos. 20, 21, 22, 23, 25, 32, 33 and 34 are received, 34 already having been received in evidence.

(The documents heretofore marked General Counsel's Exhibit Nos. 20 through 23 inclusive and 25, 32, and 33, for identification, were received in evidence.)

[199] (By Mr. Wilson:)

Q. Mr. Stafford, getting in all these letters and correspondence, et cetra, has, to a certain extent, interrupted your testimony. As I recall it, you have talked about Company's position with respect to wages and there has been

already a discussion about Mr. Ball coming into the picture. I think we better start there at the present time. About when was it Mr. Ball came into the picture, he being the Mr. Ball of Mullinax, Wells & Ball?

A. On or about May 20. But may I go back to the contract negotiations on wages where we were talking about the amount of money they increased their capital assets?

Q. Yes.

A. The Union Committee went into the meeting on that day, some time in February, I think some time along the latter part of February. At the time we discussed the financial statement we had at that time determined we could come out with an agreed to wage scale. So, even though Article II-A, the prerogative clause, was discussed at length, at every point where possible, we returned to wage discussions. The Union brought out that at eighty-five dollars a month starting wage, that that barely met the forty cent wage law, and it was such wages that it would be necessary for someone to subsidize those employees making the eighty-five to ninety dollars, one hundred, one hundred-fifteen, and one hundred twenty-five, because in this day and time it was impossible to live on that amount of money. [200] To get these negotiations started, even though we had on our first proposal, had indicated we wanted \$168.50, which amounts to one dollar an hour, one dollar an hour being one hundred seventy-three dollars a month.

Q. Did you say these things to them?

A. I said this—this was my argument to counsel, that maybe we could use the figure that was being discussed in Congress at that time—a bill had been introduced in Washington, raising the floor from forty cents to seventy-five cents, but why couldn't we start at that figure, maybe at sixty-five cents.

Q. You said this to them?

A. That's right. I am talking to Mr. Dibrell now. These are the things I am telling him. Why couldn't we start our negotiations at that. Again, the Company said they were not required by law to give us any concessions and would not give any wage increase at that time. They couldn't pass it to their policy-holders and, well, they just couldn't give it and wouldn't give it. It wasn't required by law. Those meetings went down to the time of Nile Ball's entrance. Mr. Dibrell stated a preference to me that if I were an attorney, I could understand his language. He indicated to me that I deliberately or that my legal education wasn't such to understand what we were talking about when we were talking about law. Our negotiations degenerated to the point when a point was brought up, it was [201] what was the law.

Q. Who said that?

A. The Company, and went so far as to quote National Labor Relations Board Cases; I went so far as to quote National Labor Relations Board Cases, trying to prove our point, to get down to bargaining. We were in a legal fight as to what was the law. They maintained and insisted that their belief was right. I couldn't agree with it; we differed one hundred eighty per cent—talking about angles—now, we were at opposite ends. I said they had to bargain, and they were not, because they put in impossible conditions I had to agree to before we could go into the contract, and when we did, we came back to the prerogative clause. He told me I should be an attorney. So Wilson and I went to Dallas and engaged Nile Ball.

Q. You are referring to Al. Wilson?

A. Yes. We instructed Ball to draw off a brand new proposal, incorporating practically everything as contained in the Company's letter of January 17. Now up until this point, we had never recognized the letter of January 17

as being a counter-proposal because it said no to everything we asked for in benefit to the employees.

Q. I think in this time we had agreed to one more Article. That was the Jury Duty.

Q. What had you agreed to about Jury Duty?

A. The Company agreed it would pay for Jury Duty to employees [202] called for Duty on the Jury. I brought out to the Company at that time that was no concession to the Union because all the employees are women, and under the Texas Laws women are not allowed to serve, so that was no concession to the people. Now, Ball made this contract up, submitted copies to me—

Q. You are referring to General Counsel's Exhibit No. 34?

A. Yes, sir.

Q. All right.

A. We presented—Nile Ball, we made him Chairman. I stepped down. We now had an attorney talking to an attorney in an endeavor to meet some common ground to get a contract. We had taken everything, gone the final limit, accepted the letter of January 17 as a counter-proposal and incorporated it in our new Agreement, even to the point of accepting their Article II-A, with a modification, one slight modification, which stated that the Company would have the prerogative and so forth and so on but it tied it back into the grievance procedure and arbitration procedure, and we set up the American Board of Arbitration as the one to select the third arbiter. Company refused to agree. When we got down to the arbitration, well, they said there wasn't no law, and so forth and so on. When we got down to the arbitration, they didn't like the American Arbitration Association and they suggested the Senior District Judge of the United States District Court of the Southern District of Texas, this gentlemen to select the third [203] arbitrator. It wasn't too

much; we took it. But back to the Article II-A—when Company refused to accept that, tying it back into arbitration, the Union brought out: Why should we have a grievance procedure? What good was it, where could we use it? To us, we couldn't use a grievance procedure because everything, the hiring we granted was their right to hire anybody under any condition they wanted to as long as they met the basic minimum requirements of our contract for new employees, which was set up for eighty-five dollars a month. We hadn't agreed to it because we never did negotiate wages. Our vacation would be spelled out. Company refused to amend the vacation plan, being one week after one year, and two weeks after that. They refused to negotiate the new sick leave plan which allowed five days during the first year of employment and a maximum of ten days for two years or more. Now this is being recalled from memory, and I may have other contracts in mind. But I am sure it is five days for one year and ten days for so on. That was all. We could take it, there was no law requiring them to recede from this position and they would not unless required to do so by law. They insisted.

Q. That was with respect to the sick leave. What was their position with receding in connection with vacations?

A. The same thing went for vacations as for sick leave, wages, everything in the contract. I mean the main things, the five [204] different things, the Union's hours of work, and so forth and so on. We had discussions when Ball was in on spelling out the hours you went to work, eight in the morning, quit at five, and certain time off at lunch, and at this time I started to testify to this before and was getting ahead of myself, but here was brought in that it was rumored the Company was to change the duration of the lunch hour. There were several wild rumors came to us and we asked them about it and they said they were

considering changing not the length, but opening up a new cafeteria for the benefit of the employees.

Q. When they opened up the cafeteria have they at any time discussed with you, bargained with you, charges to be charged of anything at all?

A. No, it was Company's position, opening up for the benefit of their employees; it was none of our business when they were to eat, how much to pay, and there was not too much discussion on the cafeteria. These were statements and not argued by the Union, but we did argue about changing the lunch period and staggering. The hours of work was definitely set up as one of the things we could negotiate on and they said their experience in carrying on things like that and taking them back to the people was confusing. No one knew what they wanted. As to whether the employees liked or didn't like it, they would have to arbitrarily set it and tell the employees that was it. We brought out it was customary under a union contract to negotiate [205] hours of work. New hours of work—any part of a contract could be amended any time during the duration, by mutual agreement, and with common sense on both sides about the lunch period, the union and company representatives could get together and the union representative could present back to the people involved, get a majority vote, and with company's approval that would be it, and the matter could be negotiated. They said no, they would set the hour because, again, they were not required to make any concession to the Union. We went through the first day with Nile Ball—

Q. Well, let's not get away from something. Do you feel—well, I withdraw that. Back to this arbitration business and II-A, tell us everything, as best you recall, what was said by Mr. Dibrell or Mr. Ball or anybody else there about arbitration and II-A.

A. Mr. Dibrell asked Mr. Ball several times during that meeting as to whether or not he, Nile Ball, thought the Company wasn't showing good faith if they maintained—I may be expressing that poorly—the point I am making is that Louis Dibrell asked Mr. Ball if he, in Ball's opinion thought the Company guilty of not bargaining with us because they were not receding from their position on II-A. He said he did think so, and was not specific about it, and there was double talk between the two attorneys, and I am not going to give my opinion on that. When we got back on the arbitration and grievance [206] procedure—we had an arbitration clause in there—and whether or not the Company did or did not grant a certain vacation in line with their contract, whether or not the Company did or did not obey the law in respect to other parts of the contract, or broke the law or threw it out of the window, unless we could arbitrate we told them that was valueless and they could eliminate the whole grievance procedure and we could talk rates of pay along with II-A.

Q. What was said about courts, if anything?

A. In the discussion between Nile Ball and Louis Dibrell in these negotiations of the inclusion of certain wording: "in a fair and just manner," I think the Company finally agreed to the fair and just manner; there might be a legal loophole whereby if the Company violated this contract in certain respects and if the Union thought it had enough evidence, it could bring charges against the Company in a court.

Q. You have put in the words "fair and just manner." I don't know that will mean anything to anybody merely reading the record. What was to be done in a fair and just manner, or I will ask you this: Whether fair and just manner had anything to do with Article II-A.

A. Yes. Reading from page 2, I want to show where this "fair and just manner" comes in. It is in here: "to be held and exercised by the management in a fair and just manner," and then—

[207] Mr. Dibrell:

I would welcome some assistance, please.

Trial Examiner Royster:

Off the record.

(Discussion off the record.)

Trial Examiner Royster:

On the record.

Mr. Wilson:

I will call to the Trial Examiner's attention that Article II-A of General Counsel's Exhibit 34 is the same as that which is referred to as Article 2-A in General Counsel's Exhibit 10, excepting that there has been added in General Counsel's Exhibit 34 the words "and just" before the word "cause," which is at the end of the first paragraph of II-A, and there has been added "in a fair and just manner" after the word "management"—after the word "Company" in the middle of paragraph 2-A of the January 17 letter.

Trial Examiner Royster:

January 17 or 10th?

Mr. Wilson:

The 17th, which is General Counsel's Exhibit No. 10.

I presume this is as satisfactory a time as any—

The Witness:

May I finish that thought on that?

Mr. Dibrell:

The stipulation that has been proposed, Respondent, American National, requests this addition to the stipulation which, if made, will be agreeable: Article II-A, as written in the Nile Ball contract presented to us for the Union on the 19th day of May, the Ball contract, is Article 2-A lifted exactly from our letter of January 17, except for the changes that Mr. Wilson has just stated. The Ball contract, [208] by typographical error, so agreed, used the word "management" instead of "Company" at one place. It was then agreed by the Union and the Company that that typographical error should be so changed as to make it read "Company," and the Company then agreed with the Union that the addition of the words "and just" and the words "in a fair and just manner" was fair and agreeable to the Company.

Mr. Wilson:

Excepting I would like to add that was a tentative agreement on the part of both sides, and with that understanding I accept the stipulation.

The Witness:

And may I add, the words "and just" and "in a fair and just manner" were put in by the Union to enable it to bring a breakage of the contract charges in the court in lieu of arbitration. We wanted some way somehow to police our contract.

\* \* \* \* \*

[211] (By Mr. Wilson:)

Q. Mr. Stafford, I show you General Counsel's Exhibit No. 25 which is described at the top or headed "Rules and Practices Governing Employees of the Home Office of

American National Insurance Company, Galveston, Texas." Will you tell us the circumstances under which you obtained General Counsel's Exhibit No. 25. Tell us, for example whether you asked for them, how you got them, any discussion you may have had about rules before you got that copy of the rules.

A. As I have testified, by and large, the majority of the time in our negotiations was spent on the prerogative clause which later became Article II-A in the Company's letter of January 17.

In our meeting in the latter part of February, some time in that, after the fifteenth I would say, this meeting was no exception. The Union then tired to develop from the Company the exact working rules the people were working under. We had talked to our membership and we couldn't find out; no one knew what the working rules were, and we indicated to Company if we had a copy of some rules that maybe we could negotiate a [212] contract. And at that time, in that meeting, we asked Mr. Dibrell if the Company had anything to offer any amendment or any little slight change in Article II-A that would meet some of the Union's objections to it. He know what the objections were. We had explained it over and over again. He said the Company wouldn't change that order. We had to take it as it was. They thought it was their prerogative to do that and they insisted on the Company having that prerogative.

In the next meeting, the early part of March, before the fifteenth, because we had a convention in St. Louis and I don't remember how many meetings we had in March, but it was before the convention—back on to II-A again. At this meeting, a definite demand was made on it by the Union to give us the working rules and maybe by those working rules we could come to some agreement on II-A. In a heated discussion, we had made a demand now. The

Company wanted to know what would be contained in those working rules. We told them everything we had been talking about, hours of work—that is a rule—wages—not wages—conditions of employment—what rules did the people have to break to get fired. We wanted to know those rules. They said they would give it to us but it would take some time to prepare it.

Q. Was anything said on whether there was at this time in writing a set of working rules?

A. I understand—now this is my understanding from what [213] the Company said there, and I don't know whether they had or didn't have—that they had those working rules.

Q. In writing?

A. In writing, because conversations were had as to why it would take so long to get the rules if they had them, just to pull it out of the files. But Mr. Mosele said it would take some time, that he had to reassemble it, get it in condition to hand to the Union so it would be intelligible. I don't know whether they had any rules in writing or not. My assumption—you don't care about that.

Q. No. Now, you made the demand, as you put it for a set of working rules. They stated that it would take some time to get them ready, and obviously you did receive them.

A. They mailed them on April 1. We received them after mailing. I don't know when we actually got it.

Q. I direct your attention to page 10 which I believe is the last page of the working rules and direct your attention to the top of the page—"Amendment and Additions to Rules," Wherein it states "the Company retains and shall have the right to establish new rules and practices or amend existing rules and practices or cancel existing rules and practices when ever from time to time in its discretion such action is deemed advisable."

Did you have any discussion about that clause at a meeting subsequent to April 1?

[214] A. Subsequent meetings, afterwards?

Q. Yes, sir.

A. Yes. We discussed Article II-A. We had a copy of the working rules; we had this paragraph, and the Union stated emphatically the Company did not only want the prerogative II-A but when it came down to working rules, the Company wished to retain the right to establish the rules, and without any prior notice whatsoever, could change it hour by hour, day by day, month by month, without consulting with the Union, and again, in our opinion was definitely an unfair labor practice because it was not bargaining with us. We said that with that, we had no recourse, no method of policing our contract. Mr. Dibrell said, "That is the Company's prerogative. The Company has to have it. You have to agree to it."

Q. When you are saying, "You have to agree with it," are you referring to this matter?

A. Article II-A and the Amendments and Additions to the Rules.

Q. Did you ask the Company whether or not they would recede from that position?

A. Yes, the answer was no, they were not required to under the law, and again the law did not require either the Company or the Union to recede from any position or grant any concessions.

Q. Now, yesterday, we touched on the meeting on which Mr. Ball was present. Can you tell us how many meetings he was at?

A. He was at a two day meeting beginning about—I think that [215] date was established yesterday as May 20. And then he was at another meeting May 30, Declaration Day.

Q. In other words there were two sets of meetings, one meeting that lasted the 19th and 20th and another meeting on May 30?

A. That's right.

Q. Only so we can have the record clear, you did say that at the first meeting which was on November 30, a Mrs. Fee was present as a member of the Union?

A. Yes. She left the employment of the Company. I don't remember when, in February or March.

Q. Since then?

A. Since then the committee is the same people as named with the exception of Miss Nadine Fee, I believe her name is.

Q. Will you tell us in substance if you will, what Mr. Ball said to the Company representatives with respect to that which he desired to accomplish?

A. As I said before, Mr. Dibrell expressed a desire that the Union accomodate him by employing Mr. Ball to come in on our negotiations. Mr. Ball prepared a contract granting practically everything in the January 17th letter. The Union reversed its position a hundred per cent. We were down now to talking business. We were going to give the Company practically everything they had asked for on January 17, which up to that time, there had been no "give or take." We spent all our time on Article II-A, but to get out the dead wood and get down to wages and [216] talk wages, Ball came into the picture.

Article II-A came in this new proposition subject to arbitration and minor additions, "in a fair and just manner." Ball explained to the Company that the Union had come in to get out all of the dead wood or working conditions and talk rates of pay. Any agreement there was a tentative agreement with the idea we had to accept the full contract before anything went into effect. On discussions on Article II-A, the Company took exceptions to

the Union's "just and fair manner," but finally granted that in there. But they stated emphatically they would not and never would include arbitration.

Q. As a part of II-A?

A. Yes, there would be no arbitration.

Q. Were they requested to?

A. They would not agree.

Q. Were they requested by Bali to tie in arbitration with Article II-A?

A. Very forcibly.

Q. And then they said they never would, is that right?

A. They never would, they didn't have to, and they never would.

Q. What was said about a "no strike" clause?

A. In that discussion we talked about ways of policing our contract. I stated to the Company as far as I was concerned we could forget talking about the grievance procedure altogether [217] because it had no value in the contract. We could eliminate that, but we also wanted to eliminate and would have to eliminate the "no strike" clause because we had to have some way to enforce this contract. A lot of discussion had been brought on about using the courts to process the contract, or the National Labor Relations Board, in case of discrimination against employees in regard to promotion and demotions.

Q. You say there was a lot of discussion about using the Courts and the National Labor Relations Board in connection with II-A. Tell us what the discussion was, what did Dibrell say, what did you say, what did Ball say, as best as you can recall?

A. I can't recall the exact words that Louis Dibrell used, but I will say this: Louis Dibrell said this: Any person discriminated against in regard to promotions, demotions, and rates of pay, or any condition, there would be—there would be only one reason not on account of

personality or anything else, but on account of whether or not they were a Union member.

Q. Who said that?

A. Mr. Dibrell. And the Company—they had honesty. They were going to deal with their people, and the only place where a grievance could arise would be some supervisor discriminating against an employee of Union membership. Of course, we had machinery set up by law to process and all we had to do was [218] go to Fort Worth, file unfair labor charge and they would process the case.

Q. Who said that?

A. Mr. Dibrell. The Union—I don't remember if Ball said that or not. He didn't agree to it. Maybe he did. He brought out why we could use the court for break or breach of contract, file our charge, before a Court of law and let the judge decide it. That was right of law under any contract. But I couldn't go along with Ball on his using the court. I said I could not agree to Article II-A unless the "no strike" clause was out. And the Company took the position the Union suggested the "no strike" clause and they said, "Now you are trying to take out a clause we have agreed to. That is not good bargaining."

Q. Did you say why?

A. Yes, so the Union would be in position to use its powers if, in the opinion of the Union, the Company had breached the contract.

Q. Did the elimination of the "no strike" clause tie in with Article II-A?

A. Article II-A gives the Company the prerogative to hire, promote, demote, arrange schedules of work, discipline, discharge, practically everything.

Q. I am talking about in your conversation with Mr. Dibrell at this meeting with the representatives of the Company, was anything said by the Union with respect to the elimination of [219] the "no strike" clause and the administration of II-A?

A. Yes, if the Union didn't agree that the Company had exercised its prerogative in a fair and just manner under Article II-A, it would be free to exercise its economic pressure to get the Company to administer that article in a fair and just manner.

Q. Was anything said by the Union in connection with letting the Company have Article II-A if the "no strike" clause was eliminated?

A. The Union indicated strongly it would accept Article II-A with the elimination of the "no strike" clause provided a decent wage schedule was agreed upon.

**Trial Examiner Røyster:**

What do you mean "indicated strongly?"

**The Witness:**

We told them we would.

(By Mr. Wilson:)

Q. What did the Company say when you made the offer to agree to II-A if they agreed to eliminate the "no strike" clause?

A. They would not agree to it and so stated, the Company would not.

Q. Was anything said about whether or not that position was final?

A. "This is the company's position and that is final."

Q. Was anything said at the Ball conferences with respect to the Company's position as stated in the January 17 letter?

[220] A. Was anything stated in the Ball conferences—I don't understand.

Q. With respect to the Company's position as stated in the January 17 letter.

A. Yes, Mr. Dibrell said the January 17 letter was the Company's position. They would agree to the inclusion of the "fair and just manner" but that the position as

stated in the January 17 letter was final as far as the Company was concerned.

Q. Was anything said at the so-called Ball conferences, and you understand I am referring to May 19, 20th, and May 30—Was anything said at those conferences by Ball or Union representatives with respect to wage increases?

A. The conferences on May 19 and May 20th were held on the contract and an agreement was made that we would get to an agreement on that, if possible, and then we would talk wages. Now, at the end of the conferences on May 19 and May 20, Mr. Dibrell looked at Mr. Ball and told him, "I am sorry, we can't discuss wages at this time. I have to take it up with Mr. Vogler, and due to some unexpected happening, I think he had to leave town by air," and it would be impossible for him to see Vogler in regard to another wage schedule from the Company.

Q. Who is Mr. Vogler?

A. Executive vice-president of the Company. But then after that, Mr. Vogler had to leave town, the Union and Mr. Ball agreed we would wait until Mr. Dibrell had a chance to talk [221] wages with Mr. Vogler in view of the tentative agreements we had reached in those two days, and we would have another meeting, and that meeting date was finally decided on as May 30.

Q. Did you discuss wages at the May 30 meeting?

A. Yes, we discussed it.

\* \* \* \* \*

[222] (By Mr. Wilson:)

Q. Was there a discussion of wages at the May 30th meeting?

A. The purpose of the May 30th meeting was to discuss wages. What was the discussion? Mr. Dibrell informed the Union and Mr. Ball that the Company's position on

wages as contained in the latter of January 17 was the position of the Company and they could or would not recede from that position at the present time.

Q. Was anything said as to whether or not the Company had to recede from its position?

A. I won't say whether that argument came up again at that meeting. It came up so many times, it may or it may not.

Q. What happened—

A. May I say there was not too much argument at the May 30th meeting. The Company stated its position; the Union asked for certain information, financial data, seniority roster, pay-roll that was introduced in evidence, on which discussions were held, and it was agreed Mr. Ball would write the letter and the [223] Company would furnish if they saw fit. We didn't ask for any further negotiations when the Company stated its position, the Union realized it was no use to go further into the argument. We had been negotiating from November to May 30th and the Company's position was final. We could take it or we could leave it. The law didn't require them to recede from that position and we couldn't prove to Mr. Dibrell, as he requested that we do, to prove to him the law did require that. We weren't in position to do that. All we could say was he was not bargaining in good faith and did not enter into any long winded discussions.

Q. General Counsel's Exhibit No. 18, which is the roster, has already been identified in the record as being the roster which was sent, I believe sometime around June 15 or 16, to Mullinax, Wells, and Ball, with an accompanying letter.

Trial Examiner Royster:

July 8, I believe.

(By Mr. Wilson:)

Q. July 8. On how many occasions prior to July 8, would you say the Union had asked for a roster such as General Counsel's Exhibit No. 18?

A. It is very difficult to say how many times. I will have to answer that question and say numerous, more than two, three, four, or five. I didn't keep a record of how many times I asked for it. We definitely asked for it more than three times.

Q. Will you tell us whether you had asked for that as far back as November 30 or December 15?

[224] A. I won't say I asked for it as far back as that because we didn't go that far into the contract. We may have, I don't know.

Q. When is your recollection you first asked for it?

A. During the February meetings. It could have been the January meetings, when we were talking seniority and how to administer a seniority provision in line with the Article II-A. I don't know. I frankly don't know. Let it go that I don't know.

Q. And what did the Company say with respect to a roster when you first asked them for it?

A. They wouldn't give it to me.

Q. Did they say why they wouldn't give it to you?

A. They didn't have to give it to me.

Q. Was anything said about law?

A. I won't say—they told me they weren't required to give it to me, under the law, but they repeated so many times they wouldn't do anything except what was required by law, I may be stating something—I wouldn't say the law was quoted in regard to this or mentioned in regard to this. They did say they were not required by law to give me a financial statement.

Q. When did you first ask for a financial statement?

A. When we were discussing wages back in February or January meeting, when we talked about the one hundred thirty-five million and twenty-seven million and increased assets, and so forth.

[225] Q. Did you ask them for a financial statement?

A. Yes, sir.

Q. Tell us whether or not they agreed to give you one back in January or February.

A. They did not agree to it.

Q. When was the first time they agreed to give you a financial statement?

A. In the exchange of correspondence between Mr. Ball and Mr. Dibrell.

Q. You are referring to one of the letters, being the July 8 letter?

A. That's right, the July 8th letter.

Q. Prior to that time, what had been their position with respect to giving you financial information so you might determine whether or not the Company was able to pay more wages?

A. They didn't have to do that, under the law, they wouldn't do it and they didn't see it was proper, that what they made was their business and their financial statement was their business and that was it. I brought out they had to file certain information with the authorities in Washington in the insurance field and also in the state, but that was confidential information.

Q. Who said it was confidential information?

A. Mr. Mosele, I believe, said it was confidential and he couldn't give it to me.

[226] Q. Now, after May 30, when did you next meet?

A. July 25, last Monday.

Q. Monday of this week?

A. Monday of this week.

Q. There are already in evidence or there is already in evidence, at least one letter from Mr. Dibrell to the Union requesting that there be a meeting—I believe that is in evidence. Do you happen to know whether the Company replied to that letter—whether the Union replied to that letter?

A. By long distance a meeting was arranged with Mr. Dibrell.

Q. Long distance telephone?

A. Yes, long distance telephone.

Q. Who made the long distance telephone call, you or Mr. Dibrell?

A. I called Mr. Dibrell after four o'clock, I believe, on Wednesday of last week, telling him the Union was willing to meet with him any time or place suggested by him, and in the conversation, Monday at 9 o'clock was agreed upon. He set the date.

Q. When you met were the same parties present with the exception of Mr. Ball?

A. That's correct.

Q. In other words—

A. The Company's Committee and the Union's Committee except Mrs. Nadine Fee who was dropped out way back there.

[227] Q. And Mr. Ball was not present?

A. Mr. Ball was not present.

Q. Will you tell us what was discussed, what was said at the July 25 meeting, as best as you can recall.

A. When the meeting convened, I think somewhere around ten-twenty of that morning, Mr. Dibrell again made a resume, brief resume of the progress or non-progress made in the previous discussions, including the Ball meetings and the Union.

Q. I am going to apologize. May I have that answer read please?

Trail Examiner Royster:

Read the answer.

(Record read.)

(By Mr. Wilson:)

Q. Suppose we stop there and tell us what he said instead of telling us he made a brief resume, as best you can recall. If you can recall the substance, other than being a brief resume, tell us what he said.

A. Frankly, I wasn't listening. I was thinking about the contract and what I was going to say. I know what he was saying it was a resume of the meetings; I heard that much.

Q. Then what was said?

A. The Union began asking on the various wages and issues, had the Company changed since May 30. The answer was no. We went through wages, vacations, sick leave, and several other things. I have a list, but anyway, the things we were discussing.

Q. All right. Did you simply say to the Company, as you have [228] told us here, has your position changed with respect to these five or six things, or did you say vacations, and so forth, or was there more extended discussion?

A. The Union asked the Company if—

Q. Who asked?

A. I asked the question of Mr. Dibrell, has the Company changed, has the Company's position been changed since May 30 on the vacation plan as offered at that time. The answer was no.

Q. What was the vacation plan as offered at that time?

A. The same vacation plan as contained in the letter of January 17. We asked has the Company's position been changed on the matter of wages, is it the same as con-

tained—I never mentioned the letter, he knew what I was talking about,—but is it the same as in the January 17 letter, and he said no.

Q. Let's get back to vacations. The Company did submit a vacation schedule, as it were, or planned, with its January 17th letter, did it not?

A. Yes.

Q. And it is a fact, is it not, that that vacation plan was the presently existing Company practice with respect to vacations, right?

A. To the best of my knowledge, yes.

Q. Did they say so?

[229] A. I think they did, according to the employees, that is the best plan.

Q. It is the what plan?

A. I said the best; it is the existing plan. I think the company told me that too.

Q. What had the union asked?

A. Wait a minute—the company did tell me that they didn't have any reason to change these plans because everybody was happy, etc.

Q. That is what we want to get in here. They presented that vacation plan. Was that January 17th's letter?

A. Yes.

Q. What did you ask for in connection with vacations?

A. Two weeks after one year, three weeks after fifteen years, four weeks after twenty-five years.

Q. What did the company say with respect to your offer or with respect to changing their presently existing vacation schedule?

A. They would not accept our offer, would not change their present vacation schedule.

Q. Did they say why they would not?

Mr. Dibrell:

Amos, are you talking about the meeting we had Monday?

Mr. Wilson:

No, I am talking about prior to that.

The Witness:

Including the Monday morning meeting; we [230] we changed the vacation Monday afternoon.

(By Mr. Wilson:)

Q. What was the company's position prior to this July meeting?

A. They would not change it; they did not have to under the law; did not have to grant any concessions to the union under the law. All they had to do with us was to meet and discuss things with us.

Q. Did the company say that?

A. That's right.

Q. How many times did the Company say that?

A. Numerous times. And we brought out time and time again we didn't object to meeting with them but we wanted to talk contract and not everything in the world and get the answer "no" when we got to the contract.

Q. As I understand the company said they would not change their presently existing vacation schedule and they didn't have to, under the law?

A. Not Monday.

Q. Forget Monday—prior to Monday.

A. Yes.

Q. That had been the company's position since when?

A. Since January.

Q. All right. Did they give any other reason for not agreeing to a change in the vacation schedule prior to Monday?

A. Except their employees were happy and they didn't see why [231] such a change should be made effective now.

Q. Did you say anything in response to that? Prior to Monday?

A. I did my dead level best to negotiate a vacation plan. I advanced all the reasons why they should have it and the company listened to it, made no comments, and when we finally got down to getting in the change, the answer was no, they would not change. We would revert back to the standard answer of the company: that was not required, they did not have to give any concessions.

Q. You refer to that as the standard answer of the company. Do you mean only with respect to change in the vacation plan or standard answer with respect to other matters?

A. On any additional benefit we asked the company to grant their employees.

Q. They would say they were not required to do so under the law?

A. Were not required to recede from their position or grant any concessions to the union under the law. We brought out we thought it was their duty to bargain with us on such matters.

Q. Now, we will get back to the Monday meeting again, July 25th. You say you asked them if their position had changed with respect to vacations. We might as well stay with vacations and see how we end up. Did the company's position change on Monday, July 25th, with respect to vacations?

[232] A. Yes, sir.

Q. What did the company offer with respect to vacations, on Monday, July 25th?

A. They offered and the union agreed to accept a two weeks vacation after one year and two weeks thereafter,

just two weeks, thereafter, after one year getting two weeks and strung out. However, if an employee quit after an accumulation of two weeks and if they gave the company two weeks notice, I won't say in writing, they would pay them for that time they had accrued, in other words the severance pay including the vacation time.

Q. At the beginning of the meeting, you asked if the position had changed in respect to vacations. What else did you ask them if their positions had changed in?

A. Wages.

Q. Now back on December 15, you had presented a wage schedule to them?

A. December 15th, is correct.

Q. Then with the January 17th letter you got the company's wage proposal?

A. Yes, sir.

Q. Will you tell us whether or not that wage proposal was the presently existing wage situation with the company?

A. Yes.

Q. How do you know that it was? Was anything said to you by [233] the company as to whether that was the presently existing wage plan?

A. That conclusion is drawn because they did make the statement that their employees were not complaining due to their wages and their vacations, etc., and they could see no reason for granting additional money at this time or any other benefits at this time to them.

Q. I believe yesterday you testified the company had stated it was unable to raise wages?

A. They said—

Q. Is that correct, did you so testify yesterday? Am I mistaken in so understanding you?

A. They would not raise wages. I don't know if they said they were able. They said they were different from

other establishments in that they could not pass an increased cost back to their consumer, who are the policy holders, as a machine shop, refinery, etc., and they would not take it out of profit.

Mr. Wilson:

I am going into another matter now, sir. May I have approximately two or three minutes to get some files out?

Trial Examiner Royster.

All right, we will take a five minute recess.

(Recess.)

Trial Examiner Royster.

On the record.

[234] (By Mr. Wilson:)

Q. At approximately how many of your conferences was the question of wages discussed?

A. At approximately all of them, I think it was all of them with the exception of the Ball conferences where it was only mentioned casually in connection with Mr. Dibrell's going back to Mr. Vogler. We didn't discuss wages there except to the extent he would go back and see if he couldn't bring in another wage proposal. At all the other conferences, wages were discussed more or less in detail as I outlined on the first two meetings there, they wanted our wage schedules and from there on out I would say practically every meeting, we discussed wages.

Q. And what did the union ask for?

A. It is a Step/Rate Plan of December 15.

Q. And what did the company say, or did the company give varying answers at different meetings, or was the same reply given?

A. The same answer was given at each meeting, practically, that the law didn't require them to recede from any position and they would not increase wages.

Q. What reason was given for not increasing wages?

A. They couldn't pass an increased wage rate to their policy holders due to the laws in the insurance field and there was no necessity, they could see no necessity for it, and the law didn't require it, and the law didn't require [235] them to recede from any position. Generally, that is the answer.

Q. Now, on Monday, you asked them if they had changed their position on that.

A. Yes, sir, and the position stated or the answer given was no.

Q. So, we have now covered so far as the beginning of the Monday conference is concerned, vacation and wages. What else did you ask them about a change of position?

A. Leaves of absence.

Q. What had the union requested with respect to leaves of absence?

A. Leaves of absence had been agreed to tentatively with the exception of employees receiving leaves to attend to union business. The company in the Ball meetings had agreed to let four employees have a leave of one week for state conventions, labor conventions, and two weeks for national, our national organization convention. We asked for employees to be off, and the position in the Monday meeting was the same as established at the Ball meetings. Now this is one of the concessions granted to Mr. Ball, to give the employees this leave. Now, the union agreed to the company's other leaves of absence, excluding the union, as contained in their letter of January 17th.

Q. By the time you had initiated the Ball conferences, the [236] parties were in agreement in connection with leaves of absence, at least tentatively, so far as the Ball

conferences were tentative discussions, but they were in agreement to the extent the Company had gone along with the Union's suggestions with respect to leaves of absence for union affairs, and the Union had gone along with the Company with respect to the present existing leave of absence plan?

A. That is correct.

Q. What else—that is the third thing—what else was mentioned?

A. Sick leave.

Q. What had the Union asked for with respect to sick leaves?

A. One week after one year, to accumulate on a weekly basis until a maximum of thirteen weeks had been accumulated, for older employees. I think it would take ten years to get the maximum sick benefits. The Company's present plan, as presented to us in the letter of January 17, I think covers three days for a certain number of months and then five days thereafter.

Q. That was the presently existing sick-leave plan of the Company, as offered to you in the January 17 proposal, right?

A. That's right.

Q. Did the Company change its position with respect to that proposal of sick leaves?

A. No.

[237] Q. Did the Company say why it would not change its presently existing plan?

A. Not in the Monday meeting.

Q. Prior to Monday?

A. Yes, it said that there was no law that required them to recede from any position and their present sick leave, the sick leave plan was satisfactory to them and they would not change it at this time.

Q. On how many occasions was that position stated, if it was stated more than once?

A. Again, I will have to give an evasive answer.

Q. Don't give an evasive answer. Give your best recollection.

A. It was discussed several times.

Q. In other words, you can't say whether it was ten or two; you know it was more than once, is that it?

A. It is more than two or three times because we discussed these things numerous times.

Q. So, that is the fourth matter. What was the fifth matter that you asked the Company had it changed its position on? We have had vacations, wages, sick leave—probably I can refresh your recollection. Was anything said with respect to hours of work?

A. Yes, hours of work.

Q. What had the Union asked for with respect to hours of [238] work prior to Monday, July 25?

A. To include a paragraph that hours of work and lunch periods could not be changed without a mutual agreement.

Q. Mutual agreement by whom?

A. The Company and the Union. The Union maintained that was one of the parts to be negotiated. We weren't asking for any change in hours. We wanted provision made those hours could not be changed, or shifts, if and when established by the Company, we would have a right to come in and agree to the hours and the shift differential, and so forth. The Company, again, would not grant any concession in that. And at the Monday meeting emphatically stated their position had not changed.

Q. Now, you say the Company would not grant any concession. When did you first ask at these meetings for the right to be consulted, or—I withdraw that. When did you first ask at these meetings that the Company agree to

consult with you before changing the present existing hours of work and shifts?

A. In our first contract we put in the established hours then being worked with the Company, and we brought out that was a collective bargaining part of an agreement, and this was put in there to make it part of the contract, and when those hours were changed. That was the explanation at our first meeting, as I recall it, and of course we talked the whole contract at each and every meeting there, practically.

[239] Q. At the very beginning you asked that the present existing working hours be incorporated in an agreement?

A. That's right.

Q. Did the Company agree or did it not agree to incorporate the present existing working hours in a contract?

A. They would not agree to make that a part of collective bargaining because they wanted to maintain—they gave a reason—they wanted to maintain flexibility and wanted the right to change those hours any time they saw fit. As to the present hours, it never was brought up to change the eight o'clock starting time and the five o'clock quitting time. A lot of discussion was had on the lunch period, and they unilaterally made a change, putting into effect, changing that lunch period. I don't know when they opened their cafeteria, but I think it was the latter part of May or during June, because we discussed it at the Ball meetings. And at that time, to the best of my recollection, I know the hours hadn't been changed, at those meetings, and they had been changed when we came into the Monday meeting. They put in a stagger system.

Q. Did the Company state why it would not agree to incorporate the present—when I say “the present,” the then present working hours in an agreement?

A. Yes, they needed the flexibility to take care of their business and they couldn't sit there and say what would happen [240] months ahead of that time, and they wanted the right to change those hours as long as they conformed with the Wage and Hour law, the eight-hour day. If they wanted to start at eight-thirty that was their business; and they would put it into effect.

Q. Did they say whether or not they would recede from their position with respect to not bargaining on the working hours?

A. They would not recede from the position described.

Q. Did they say why they would not recede?

A. Because of the flexibility needed in the operation of the office, and because they were not required to do that by law. The answer, "by law," is a standard answer, because they do not have to grant the Union any concessions or grant any part or recede from any position, under the law.

Q. Now, what was their position as stated on Monday, July 25, with respect to bargaining on working hours?

A. The Company would not change its position. We asked them if they had anything new to offer, "Will you change your position?" And they said no to both of them.

Q. Was the question of holidays discussed as another point at the beginning of the Monday, July 25, conversation? Did you inquire about their position on that?

A. During the morning we went through the list, all of these things, including holidays, and the answer was no.

Q. Just the question of holidays was discussed, right? [241] A. Yes.

Q. What had the Union requested with respect to holidays, prior to Monday, July 25?

A. Seven paid holidays during the year.

Q. About when did you first request seven paid holidays in the year?

A. In our original contract as presented on November 30.

Q. And, of course the contract is in evidence and it does name certain days?

A. It names seven holidays.

Q. What was the Company's position with respect to the number of holidays that would be given—no, I withdraw that. What was the Company's position with respect to the number of holidays they would agree to give to the employees?

A. Five.

Q. How many holidays were they getting at that time?

A. Five.

Q. Was anything said about whether or not the Union would agree to give more than five or to give six or seven?

A. The Company was asked that?

Q. Yes. What did the Company say?

A. "No."

Q. Did they give any reason why they would not increase the number of holidays which were then being given to the employees?

A. A discussion was had and a compromise. The Union said [242] they would accept the number of holidays granted the Industrial Agents, which is six days. The Company said—

Q. Let's take it a little slower. You, the Company, and I know about Industrial Agents, but the Trial Examiner and the Board do not. Now, what did you say to the Company with respect to Industrial Agents and what was said—first of all was anything said with respect to whether or not the Company had a contract with the Union which represents the Industrial Agents?

A. Yes, the Company does have a contract with the Industrial Agents.

Q. What was said about the number of holidays that were given to Industrial Agents under the contract between the Company and that Union?

A. The Union brought out that the Company granted six holidays under the Industrial Agents' contract. The Company maintained that the Industrial Agents had to work on their holidays because they were on a commission basis, in order to make the money they wanted, whereas in the office, the people were on a straight salary and fell under a different category, and the Company would not change the number of holidays from five to six. We receded from our position of seven holidays at this time. Prior to that, I can remember no reason the Company advanced why it would not grant seven holidays, other than they were not required to give the Union any concessions or they [243] were not required to recede from their position, under the law.

Q. Now, you say the Union had receded from its request for seven and was requesting six. When did you recede from that position?

A. In the Ball conferences.

Q. And as I understand, the Company refused to go up to six?

A. May I add I did not know up until that time how many holidays the Industrial Agents had, and this was a surprise to me, and I readily acceded to it, to move the negotiations on. Here was where they had granted a Union in their own company six holidays. I don't know about the "paid," but granted six holidays, and wouldn't grant us but five.

Q. I refer you to General Counsel's Exhibit—I don't think I have finished up on that line. Did you ask the Company on Monday, July 25, if they had changed their position with respect to holidays?

A. Yes.

Q. What did they say?

A. "No."

Q. I show you General Counsel's Exhibit No. 18, which is the roster already described.

(Document handed to witness.)

Q. (continued) Referring to General Counsel's Exhibit No. 18, I refer you to the last three pages where there are listed night shift employees, showing their hourly rate to be one [244] dollar and showing the date, service date, apparently when they were first employed. And before I ask you any question about it, I will direct the attention of the Trial Examiner to what I believe is correct, that all of these people so listed on this General Counsel's Exhibit 18 were hired subsequent to the Union's request to bargain. Now, I may possibly be mistaken. There may have been one or a couple more hired prior to that, but I don't believe so.

Now, directing your attention to these dollar-an-hour people who are on the night shift, those people, of course—

\* \* \* \* \*

[245] (By Mr. Wilson:)

Q. With respect to the people named on the last three pages of General Counsel's Exhibit No. 18, the pages being numbered in pencil at pages 15, 16, and 17, can you tell us whether or not the Company ever discussed with you in any manner whatsoever the amount of pay which should be given to these employees who have been hired as night shift employees since you requested bargaining?

A. No.

Q. Did the Company ever at any time discuss with you the putting on of a new shift, of a night shift?

A. No.

Q. On Monday, July 25, was any mention made of the fact that these new employees hired after you requested bargaining were making more money than the regular run of the mill employees?

A. Yes.

[246] Q. What was said by whom?

A. Mr. Wilson.

Q. That is A. G. Wilson?

A. A. G. Wilson, Business Agent, called the Company's attention to the night shift employees as contained here, and stated to the Company that the Union was the bargaining agent for those employees and that those employees were receiving a dollar an hour as compared to their full-time employees of eighty-five dollars up through two hundred dollars—a few of them I think get two hundred dollars.

Q. You are talking about a month now?

A. I am talking about eighty five dollars a month on up to two hundred. The average pay is around that much money. I haven't averaged it up and that can be up and down. The Company said these employees were hired because they had to have a shift put on to take care of the volume of work and the rate of a dollar an hour had been set by the Company for those employees. They did not take issue that we were the bargaining agent. The way I took it—you are the bargaining agent, so what. We put them on at a dollar an hour. Wilson inquired why the present work force couldn't take advantage of the dollar an hour on an overtime basis.

Q. In other words, he inquired why they had to hire new employees for night shift, why they couldn't give the day shift employees a chance to work overtime at a dollar an hour?

[247] A. They said the law required they don't work a woman over fifty-four hours a week or nine hours a day. It was against the law. Wilson brought out they had granted prior to our asking bargaining rights, privileges for them to work on overtime basis and it had been withdrawn after we won our election.

Q. Wilson pointed out prior to the time you asked for bargaining the regular run of the mill employees were allowed to work overtime?

A. That's correct.

Q. And did the Company tell you they had changed that practice and now they had a night shift of employees?

A. Yes, because they had to get special permission from some state officer to work them and it entailed considerable work on their part or inconvenience.

Mr. Dibrell:

The county judge.

A. (continued) And they would rather handle it this way and they would not bring a lady back or keep them an hour at night, that it wouldn't help them any. They had to have three or four hours overtime. We brought out maybe a shift could be set up on Saturday, because these people, with the present wages, needed all the money they could get. They said that was impractical, they couldn't operate that way.

Q. Prior to that, did they mention to you they were discontinuing overtime for day employees and hiring new employees [248] and were going to pay them one dollar an hour, did they mention that to you before Monday, July 25?

A. No, sir. They did not bargain at all on this shift or wage rates. They unilaterally put it into effect without even discussing the matter with the Union.

Trial Examiner Royster:

Will you inquire as to when this night shift was inaugurated.

(By Mr. Wilson:)

Q. When did they say the night shift was inaugurated?

A. They have never told me.

Mr. Dibrell:

I think it is shown on the schedule.

Trial Examiner Royster:

It shows when the individuals were hired but does it establish when the shift was started?

Mr. Wilson:

Well, are we on or off the record?

Trial Examiner Royster:

Let's be off the record.

(Discussion off the record.)

Trial Examiner Royster.

On the record.

(By Mr. Wilson:)

Q. Was anything said at any of these conferences about discontinuing rest periods?

A. Yes.

Q. When did you discuss the discontinuance of rest periods?

A. I won't say when. I will say very early in the series of meetings.

Q. Do you happen to know when rest periods were discontinued?

I withdraw the question. Was anything discussed at any [249] of these meetings about having an hour and ten minutes for lunch instead of an hour?

A. Yes.

Q. Will you tell us when there was this discussion and what was said in the discussion?

A. One of the earlier meetings, I brought up to Mr. Dibrell and Mr. Mosele the fact the company had previous to our election and certification granted employees fifteen minutes in the morning and fifteen minutes in the afternoon as rest periods where they could go out for coffee or get a smoke, and so forth and we thought as a reprisal for the employees voting in expressing the thought to Mr. Dibrell and Mr. Mosele, they had discontinued those rest periods, and we would like for the company to put those back in. This was very early. I remember when I brought the subject up I told them I didn't think that was a proper subject to put under our negotiations. That was in the November 30th, or December 15th, meeting and the company told me they found it to be too confusing, people rushing out in the morning and rushing back in. It upset their business so they had to discontinue it. When I made up the Step Rate, I incorporated a fifteen rest period in the morning and fifteen minutes in the afternoon, to be negotiated, negotiating it back in, and in discussing that portion of it on the several occasions, the company told me they would not do that. And the Union endeavored to get smoking privileges [250] in the offices for the employees, and they refused to grant that. Does that answer your question?

Q. You have told us more or less what was discussed. Was anything said about whether or not they would bargain over rest periods, whether there should be rest periods

or should not be rest periods for fifteen minutes in the morning and fifteen minutes in the afternoon?

A. They refused to bargain over the matter, refused to grant smoking privileges in the offices. They did state they could smoke in the rest rooms, and at our last meeting we brought out that on the one floor—I believe it is the sixth floor—that the employees were being clocked in the rest rooms and allowed only one trip in the morning and one in the afternoon, of only five minutes.

Q. Was anything said about what the custom had been with respect to going to rest periods on the sixth floor before?

A. Let me change that. I don't think we took it up. We talked about it in the committee. I withdraw that we discussed it with the company. It was not discussed with the company, but we did discuss smoking privileges in the rest rooms and their refusal to reinstate the fifteen minutes in the morning and the fifteen minutes in the afternoon.

Mr. Wilson:

May we be off the record a moment?

Trial Examiner Royster:

Off the record.

(Discussion off the record.)

[251] Trial Examiner Royster:

On the record.

(By Mr. Wilson:)

Q. Mr. Stafford, with respect to installing new shifts, changing shifts, or abolishing shifts, did the company state its position with respect to its rights to do such things as a

matter of company prerogative, and without consulting the Union?

A. Yes.

Q. What did the company say?

A. They could establish shifts as the work demanded, any time, at any time, to begin at any time, ending at any time and could discontinue shifts any time they so saw fit. The only matter we could discuss was the shift differential, which were rates of pay.

Q. Did they state that as being a matter of prerogative or not?

A. That was their prerogative.

\* \* \* \* \*

[316] C. A. STAFFORD, resumed his testimony as follows:

# Cross Examination—continued.

(By Mr. Dibrell:)

Q. You said all except the first one or two of our meetings were held in our library room in our office.

A. As I recall, there was only one meeting that was not held in your library and that was in your office or your brother's office.

Q. Now, you have had no objection to holding the meetings in that place, have you?

A. None whatsoever.

Q. And you don't have now, to continuing the meetings in that place?

A. No.

Q. Now, the question if this night shift, have you ever until now objected to this night shift?

Mr. Wilson:

Object on the grounds it is immaterial; if it is unilateral action, as the testimony shows, it is immaterial.

Trial Examiner Royster:

Well, the question could bring forth a response about a discussion or mention of the night shift, so I will overrule the objection.

° A. The discussion on the night shift was limited to the paragraph on the hours of work, wherein the Company maintained the [317] position they could establish any shift at their own discretion. The only portion of the argument was how much they would pay them in the form of shift differential. We reiterated many times that was a bargainable deal and you refused to bargain on it. You established the shift without discussing it with us.

Q. My question, Amos, was: Did you ever seek to bargain with us, the fact that this night shift was in existence, did you ever raise that question, not in the general line of inquiry as to II-A, but specifically, have you ever before raised the question about the night shift being in existence?

Mr. Wilson:

Object to the form of the question by bringing in II-A. The witness hasn't said anything about II-A. He said he tried to bargain about the hours of work and the Company said as far as shift was concerned, that was their prerogative.

Trial Examiner Royster:

Was the question of the night shift ever brought up specifically—that is the question?

Mr. Dibrell:

Yes, sir.

Trial Examiner Royster:

You may answer.

A. The question was brought up and Mr. Mosele stated he could not and would not agree to discuss with the Union the matter of when a shift would start, whether or not he had to have a shift, whether or not he had to continue the shift. Does that answer your question?

[318] (By Mr. Dibrell:)

Q. Did you demand that we bargain with you or negotiate with you as to the establishment of that night shift?

A. I demanded that you negotiate with me on the establishment of shifts and establishment of hours of work. You refused to do it. I did not bring up the shift because you would not even meet the first part of negotiating on the shift. You told me you would establish them and I didn't need to try to bargain with you on shifts. The only thing you would talk about was the rates, and we tried to talk rates and we never did get anything from you in the form of an offer as to what you would think a proper shift differential.

Q. Then, as I understand it, regardless of the reason motivating you, it is your testimony you did not seek to bargain?

A. I attempted it through the use of bargaining hours of work and during those discussions we definitely discussed the establishment of shift. I did not bring up the establishment of this shift because you would not bargain with me on anything in regard to establishment of shifts.

Q. As a matter of fact, Mr. Stafford, didn't you know the shift had been started on the eighteenth day of August?

[319] A. I do not know when you established you shift.

Q. Is it not a fact, Amos, that you knew when we started negotiating in November, that these shifts had been for some time in effect?

A. All I had was hearsay information and I cannot say you had in effect a shift. We talked shift. You told me some time in negotiations you had one. As to when you established it or whether it was established on a certain date, I didn't pry into your business that far.

Q. Had Mrs. Inlay, Mrs. Beal, or Mrs. Fee told you about the shift?

A. No, sir.

Q. Hadn't Wilson told you?

Mr. Wilson:

Object on the grounds it is immaterial what anyone told.

Trial Examiner Royster:

All right, he is trying to show he did know. I overrule the objection.

A. I don't know when you established your shift or remember any conversation I had with any of the committee or Wilson as to your shift.

(By Mr. Dibrell:)

Q. Now, in respect to the shifting of the lunch hour—when have you ever specifically sought to bargain or negotiate with us as to the shifting of the lunch hour?

A. I can't set the date. I will say we definitely discussed [320] and tried to bargain and obtain an agreement from you that before any hours were changed, they would be agreed to mutually by the parties, the Company and the Union. That discussion is one of those discussion which

occurred while Mr. Ball was present. There was considerable discussion on that.

Q. And when the question was brought up, Amos, were you not specifically asked whether you had any objection to the staggered lunch hour?

A. Yes, you asked me personally if I had any objection. My answer to you then and my answer to you now, personally I don't care. I told you further that it should be taken up with the people involved and their reaction to the change or the staggered shift should be taken by the Union of their membership and their reaction conveyed back to you by the Committee, which is customary in bargaining.

Q. You know the reason for the stagger, don't you?

Mr. Wilson:

Object on the grounds it is immaterial what grounds the Company had for its unilateral action.

Trial Examiner Royster:

I will sustain the objection.

(By Mr. Dibrell:)

Q. Do you know when the cafeteria opened?

A. No, sir.

Mr. Dibrell:

I don't think it is improper for me to address you and see where I stand. I don't want to ask questions in violation of the rules. It is my understanding of the Board's decisions that issues which are bargainable do not, of necessity [321] —every particular issue that might be bargainable does not of necessity, have to be made the subject of bargaining. If they want to bargain on it, you have to bargain, but there are many things, as I understand it, are strictly subject to bargaining. But it is the sort of

thing nobody ever questions about, and if it is done and nobody requests to bargain, that is not of itself unfair labor practices.

Trial Examiner Royster:

There are many such situations.

Mr. Dibrell:

We are attempting to establish this as one of those situations, done for the reason Mr. Stafford knew all about it. He was given the opportunity to ask if it was all right and he did not avail himself of it and now he should not be heard to say in and of itself, it is refusal to bargain.

Trial Examiner Royster:

The objection was to the question wherein you asked Mr. Stafford if he did not know the reason for the staggered lunch period. I don't think it makes any difference whether there was a reason. The question is, is there a situation where you requested him to bargain and he refused to bargain.

(By Mr. Dibrell:)

Q. Did we ever, as the Negotiating Committee of the American National, refuse upon your request, to bargain with you specifically in respect to the staggering of these lunch hours?

The Witness:

Excuse me, would you give me that again?

(Question read.)

[322] A. Yes, you refused to bargain with me on the staggering of lunch hours and you gave me your reasons why you staggered the lunch hours.

Q. We gave you the reason why we staggered the lunch hour? What was that reason?

A. Because you opened up a cafeteria and it was impossible to seat seven hundred or eight hundred people—I am hazy on the number, but I think you said seven hundred or eight hundred. Not only did the Insurance Company use it, but other Moody offices. To feed them in that period and to provide seating space and to handle the crowd, you staggered it so the employees would not all go to the cafeteria at one time. Again, we asked you to bargain on it. Let's see what our people think about the staggered hours. Let's see if the department is satisfied. Let's bargain on the thing. This is a bargainable matter. Let's find out what our people think about it. You refused to. You would put it in, unilateral, because it fit with your business and that was it.

\* \* \* \* \*

[477] LEONARD MOSELE, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination.

(By Mr. Wilson:)

Q. Your name is Leonard Mosele?

A. That's right.

Q. What is your position with the American National Insurance Company?

A. I am Secretary-Comptroller.

Q. You have been on the committee negotiating with the Union in connection with the contract in this proceeding?

A. That's right.

\* \* \* \* \*

[560]

## Re-Direct Examination.

Q. Now, we have Article IV, Section 1. Between December 15 and January 10, the Company decided that it would not agree to Article IV, Section 1, isn't that so?

A. That's right.

Q. And don't you recall that at the January 10, 11, and 12 meetings, Mr. Dibrell, speaking to the Union representatives, stated that he knew of no law which required the Company to furnish the Union with a roster?

A. I believe that is so.

Q. It was not until considerably later in the proceedings, after Mr. Ball entered the picture, that the Company, on or about July 8, 1949, furnished the Union with a roster, is that not so?

A. That's right.

Q. When did you first decide that you would give the roster even though no law required that you give it?

A. We decided to give the roster shortly—let's see—as [561] I recall it, we got the request in writing for the roster and when that request came, I believe it was made at a prior meeting, a meeting prior to that, and I believe it was suggested that we have it in writing. That letter came, we—discussed it, and we decided to furnish it.

Q. And what was said about the fact no law required you to furnish a roster of names?

A. Well, I don't recall when we decided to go ahead, but we discussed it, about the law. The position that was taken was that the Union represented the people and while they could prepare a list, we might just as well give it to them.

Q. When was it that you decided to furnish the names?

A. The names on the roster instead of the numbers?

Q. When did you decide to furnish the names, yes.

A. When the request was made.

Q. Well, the request was made orally before you sent a roster with only code numbers, was that right?

A. That's right. I think it was Mr. Ball who made that request.

Q. And then you sent a roster with code numbers instead of names, right?

A. That's right.

Q. Then when did you decide you would furnish the names?

A. Mr. Ball wrote and said—well, I don't know now—I don't know whether Mr. Ball wrote or—

[562] Q. In any event, you just don't know?

A. I do know this, that the information came to us. I don't know exactly how now, but that was thought satisfactory—they would prefer to have the names, so we made it up again with the names instead of the codes.

Q. Now, up until the time Mr. Ball had requested the roster and the Company had maintained its position there was no law that required you to give a roster, is that so, it maintained that position at the meetings?

A. That is what you say. But we just didn't want to give the roster until we were ready to.

Q. That you didn't have to do it and you wouldn't do it unless you wanted to, is that right, sir?

A. Substantially, yes.

\* \* \* \* \*

[567] Q. We have Article VII, "Wages." Article VII, Section 1 That of course refers to the December 15 proposal of the Union. Is that not so, sir, where it refers to Exhibit "A"? [568] You have got that Exhibit "A"—on December 15?

A. That is right, that is correct.

Q. And, of course, the Company did not agree to—I withdraw that—between December 15 and January 10; the Company decided it would not agree to Article VII, Section 1, right?

A. That's correct.

Q. And the same is true with respect to 1, 2, and 3, isn't that so?

A. That is correct.

Q. It was the Company's position, was it not, that so far as 2 and 3 are concerned, that it would do that which it was required to do by the Wage and Hour law, right?

A. That is correct.

Q. And, of course, that was the position that the Company maintained throughout the negotiations, right, sir?

A. That's right.

\* \* \* \* \*

[618] LEONARD MOSELE, resumed his testimony as follows:

Re-Direct Examination—continued.

(By Mr. Wilson):

Q. Do you now have the information as to when the shifts were established and that sort of thing?

A. Yes, I do.

Q. Will you let me have that please sir?

(Document handed by witness to Counsel and then returned by counsel to witness.)

(By Mr. Wilson):

Q. Now, do you feel you can let us have the information by referring to the notes or what it is you have in your hands?

A. Yes, that's right.

Q. Please tell us in your own way about the establishment of the shifts.

A. First of all, I said yesterday that we had four shifts. I now find we have six shifts, the Industrial Policy Issue Department started its shift on August 15 with approximately fifteen employees. At present there are fifteen on that shift.

Mr. Dibrell:

Excuse me just a minute. I suggest that you place the year. I think it is known.

The Witness:

August, 1948.

Mr. Wilson:

Thank you.

[619] A. The Tabulating Department started a shift on December 2, 1948 with approximately five people. Now, there are three on that shift. The Valuation Department started a shift on December 13, 1948, with approximately seven people. Now there are at present eight on that shift. The Industrial Settlement Department started a shift on January 3, 1949 with approximately ten people. They now have forty-two people on that shift. The Ordinary Medical Department started a shift on March 14, 1949 with approximately ten people. They now have twenty-two employees on that shift. The Ordinary Policy Holders Service Department started a shift on May 16, 1949, with approximately ten employees. At present, they have eleven employees on that shift. That is all of them.

(By Mr. Wilson):

Q. The first was Industrial Policy Issue Department?

A. That's right.

Q. Then, the Tabulating Department?

A. That's right.

Q. Valuation Department?

A. That's right.

Q. Industrial Settlement?

A. Yes.

Q. Ordinary Medical Department and the Ordinary Policy —

A. Holders Service Department.

Q. Now, the number of people that you have named, are they [620] all on that six to nine shift?

A. That's right.

Q. Now, do you know when you started that full night shift from five p. m. to midnight or one a. m.?

A. No, I do not know that. We had the night shift in part of '47, then discontinued it and then restarted in '48, but I do not have that with me.

Q. They are the people in the Tabulating Department?

A. Yes, sir.

Q. And I suppose that information could be very readily obtained, could it not, just by asking the manager?

A. That's right. I can get it at noon, sir.

Q. All right, sir, would you do that please at noon?

A. Sure.

Q. Now, these employees that we have been talking about—this six to nine shift people—they all receive one dollar an hour?

A. That's right.

Q. Now, with respect to your shift for the Ordinary Policy Holders Service, for the Ordinary Medical Department, and for the Industrial Settlement Department, the Valuation Department, and the Tabulation Department,

you did no discuss with the Union the setting up of those particular shifts. Isn't that so?

A. No, we did not.

\* \* \* \* \*

[837] Mr. Wilson:

\* \* \* \* \*

I would like to state for the record that I have received telegram addressed to me, E. Don Wilson, Attorney for NLRB, care Clerk U. S. Court House, Galveston. I received this yesterday, which reads: "Re American National Insurance Company 39-CA-33 Mr. Charles G. Dibrell's letter August 1 and subpoena duces tecum enclosed requesting all recordings delivered to National Labor Relations Board by Nile E. Ball of proceedings of meetings between Union and Company Negotiation Committees held May 19 and 20, 1949, wish to advise that these recordings are not in our possession at this time. Nile E. Ball presented himself to the office June 29 and [838] requested of Mrs. Ella Ruth Rettig that she deliver to him the machine and the records which he had loaned to us, and she delivered them to him. Mr. Ball in conversation this morning by phone fixes date as June 29, and acknowledged receipt of the records and machine." Signed "Edwin A. Elliott Regional Director National Labor Relations Board, Fort Worth, Texas."

I exhibit to Mr. Charles Dibrell, and of course counsel for the Company, the telegram which I have just read.

(Document handed to counsel.)

Mr. Dibrell:

Well, at the close of my testimony, or at least at a later date, we will make such further requests or motions in respect to those subpoenas or other evidence in lieu thereof as we have then decided.

Trial Examiner Royster:

All right, sir.

LOUIS J. DIBRELL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Mr. Wilson:

I waive the swearing of Mr. Dibrell.

### Direct Examination.

(By Mr. C. G. Dibrell):

Q. Please state your name to the reporter.

A. Louis J. Dibrell.

Q. You are my attorney?

A. I am.

Q. Please state your connection as an attorney with Respondent, [839] American National Insurance Company, in this case.

A. I am a member of the law firm of Dibrell, Dibrell & Greer, which law firm is general counsel for the American National Insurance Company. In addition to that connection, I am and have been, since its organization and inception, chairman of the American National Negotiation Committee in these negotiations with the Office Workers Union.

[842] During the morning session of the second meeting, which [843] took place on December 15, at which meeting Mr. Mosele was present, we requested of the Union that they complete the proposal which they desired originally to make to us, by presenting to us their wage demands. They either called a recess, requested a recess during the course of that morning's procedure, or it is entirely possible that it was the noon recess of which I speak. But at any event, after a recess, the Union's wage proposal, denominated their Step Rate Schedule, was presented. That wage proposal is the document which has been introduced into evidence as GC—

Mr. Wilson:

I will stipulate it is in evidence, and whatever its number is, it has already been described, and I object to wasting time.

Trial Examiner Royster:

He can describe it by number if he desires to.

A. (continued)—GC-9. In addition, however, to GC-9, concerning itself solely with wage proposals, it also consisted, in part, of some numerous, additional, contractual provisions that were of the same character that had been submitted in the contract. That GC-9, of course, speaks for itself as to its content.

## GENERAL COUNSEL'S EXHIBIT 24.

Received April 4, 1949. N. L. R. B. Sixteenth Region  
Port Worth.

American National Insurance Co.  
W. L. Moody, Jr., President.  
Galveston, Texas.

Dibrell, Dibrell & Greer  
General Counsel  
903 Medical Arts Bldg.

Louis J. Dibrell  
Charles G. Dibrell, Jr.  
W. E. Greer

April 1, 1949:

Hon. C. A. Stafford,  
Office Employees International Union, A. F. of L.,  
2070 Rosedale Drive,  
Port Arthur, Texas.

Dear Mr. Stafford:

In accordance with the understanding reached between us at our last contract negotiation meeting held in our office March 11, 1949, we hand you herewith one copy of "Rules and Practices Governing Employees of the Home Office of American National Insurance Company, Galveston, Texas."

Two copies of these Rules and Practices, together with a copy of this letter, are being today mailed to Mr. A. G. Wilson, 1115½ Strand, Galveston, Texas.

It is our understanding that after you have given such study to the enclosed Rules and Practices as you may wish, you are to contact us for the purpose of arranging further contract negotiation meetings. We ask that you give us as much advance notice as to when you desire

to resume such contract negotiations as possible, in order that we may arrange our commitments.

Yours very truly,

DIBRELL, DIBRELL & GREER,

By LOUIS J. DIBRELL.

LJD:B

Enclosure.

cc: Mr. A. G. Wilson

1115½ Strand

Galveston

Mr. John Thomas

Field Examiner, N. L. R. B.

T & P Building

Fort Worth, Texas

## GENERAL COUNSEL'S EXHIBIT 25.

### Rules and Practices

Governing Employees of the Home Office of

American National Insurance Company

Galveston, Texas

### Seniority

Seniority shall be defined as the length of service since the last date of hiring. Length of service with the company is the length of uninterrupted employment with the company commencing with the latest date of hiring. For the purpose of promotions, seniority shall be based upon length of continuous service in the applicable job classification. The company's record in respect to last employment date and length of service on each job classification shall be conclusive.

New employees and those hired after a break in continuity of service will be regarded as probationary em-

employees for the first three months of actual employment and will receive no continuous service credit during such period. At the end of the probationary period the employee's seniority shall be retroactive to the date of hire.

Seniority will be lost by any act which breaks the continuous employment with the company.

An employee who leaves the employ of the company as a result of his induction in the armed forces of the United States, shall upon reinstatement on the company's active payroll be given continuous service credit for the time served in the armed forces. Continuous service credit shall discontinue upon voluntary re-enlistment in the armed services. It is understood that the company shall reinstate as required by law, employees who left their positions upon induction in the armed forces of the United States.

Where a "Temporary employee" or a "Part Time employee" is permanently employed on full time, the aggregate of his temporary or part time period shall not be added to his period of regular employment in determining length of service, but his service shall date from the beginning of his most recent full time employment.

#### Promotions

It is the policy of the company to promote employees from its own ranks. The company has the sole right to determine whom to promote or demote.

The company will consider seniority, as defined in rule governing seniority, as the controlling factor in the promotion of an employee to a better position where service record, physical fitness, application, ability to perform the duties of the higher position, skill and efficiency are relatively equal.

Applicants for promotion to a higher job classification shall submit to and pass to the company's satisfaction

tests applicable to the job classification. Failure or refusal to pass tests will prevent promotion to a higher job classification, but will not preclude the employe from future consideration for promotion. Selection of tests, types, procedure and grading thereof, as well as company practices in regard thereto, remain the company's exclusive prerogative. The company agrees, however, to apply them uniformly and without discrimination. Neither tests nor grades shall be a subject of review and the decision by the Personnel Director shall be final.

#### Demotion—Transfer

If after a reasonable lapse of time, not exceeding 30 work-days a promoted employee fails to perform satisfactorily the duties of the position to which he has been promoted, the company shall have the exclusive right in its direction to remove such employee from such position and return him to his former position or to a position in the former job classification at the former rate of pay, without loss of seniority.

An employee whose performance in his present job is unsatisfactory may be downgraded to a lower rated job without respect to his seniority standing, and when so downgraded the employee's rate of pay shall be changed to conform with the rate of pay for his new classification and his ability, skill and efficiency in the new classification.

An employee wishing to transfer from one Department to another may make application to the Personnel Office. The company shall have the exclusive right to transfer, temporarily or permanently, to any Department, employees of other Departments regardless of seniority.

## Leave of Absence

Leave of absence shall be understood to mean an absence from work without pay, requested by an employee and consented to by the company in advance, for an agreed period of time and for good cause. Any absence from work on the part of an employee without such prior agreement and consent by the company, or his failure to report to work at the end of such leave, may at the option of the company be treated as a "quitting" on the part of such employee.

Requests for leave of absence must be submitted by the employee to the Department Manager. The company retains the exclusive right to approve or disapprove requests for leave of absence. Seniority will not accumulate during a leave of absence granted for reasons other than disabling illness or accident of the employee.

In the event of disabling illness or accident, the employee is requester to inform the Department Manager by 9 a. m. of the first day of absence for such cause in order to prevent possible termination of employment. Sick leave will then be allowed automatically for a period of time consistent with the nature of disabling illness or accident but not exceeding 30 days. The company maintains the right to require satisfactory evidence or medical certificate to prove inability to work.

Department Managers must submit all requests for leave of absence in writing to the company's Personnel Director for consideration. The Personnel Director will approve or disapprove such request for leave of absence.

## Paid Sick Leave

An employee who becomes ill or disabled and is unable to work and makes proper report of his illness or disability to the company will upon approval by the company receive sick leave with pay as follows:

- (a) During first three (3) months of service—no paid sick leave.
- (b) During remaining nine (9) months of first year service—5 days.
- (c) Every year thereafter—10 days.

The company retains the exclusive right to determine the granting or disallowing of sick leave with pay. It further retains the right to require satisfactory evidence or medical certificate to prove ability or inability to work.

Part time employees are not eligible for paid sick leave.

#### Vacations

Vacations with pay are granted after continuous full time service of one year. No vacations are allowed to part time employees with less than 20 hours of service per week. Part time employees with 20 hours or more per week of continuous service for one year or more are granted one half of the vacation credits for full time employees.

- a) Employees whose last date of continuous employment began in the preceding calendar year receive one (1) week's vacation with pay as follows:

If commencement  
date of last  
employment is:

December 1948

November "

October "

September "

August "

1 week's vacation  
will be granted not  
before month of:

November 1949

October "

September "

August "

July "

If commencement  
date of last  
employment is:

July	"
June	"
May	"
April	"
March	"
February	"
January	"

1 week's vacation  
will be granted not  
before month of:

June	"
May	"
April	"
March	"
February	"
February	"
February	"

(b) Employees whose last date of continuous employment began in the calendar year of 1947, receive two (2) weeks vacation with pay in accordance with the schedule below and the restriction for the second week:

If commence-  
ment date of  
last employ-  
ment is:

1 week's Vaca-  
tion will be  
granted:

Additional 1 week's  
Vacation will be  
granted not before  
month of:

Any time during  
1949 except

December 1947	January
---------------	---------

November	"	"
----------	---	---

October	"	"
---------	---	---

September	"	"
-----------	---	---

August	"	"
--------	---	---

July	"	"
------	---	---

June	"	"
------	---	---

May	"	"
-----	---	---

April	"	"
-------	---	---

March	"	"
-------	---	---

February	"	"
----------	---	---

January	"	"
---------	---	---

November 1949
---------------

October	"
---------	---

September	"
-----------	---

August	"
--------	---

July	"
------	---

June	"
------	---

May	"
-----	---

April	"
-------	---

March	"
-------	---

February	"
----------	---

Any time in 1949 except

January

Any time in 1949 except

January

The vacation schedule of sub-sections (a) and (b) hereof is for the year 1949. Subsequent years are determined in a corresponding manner by advancing the month and year dates to the dates then applicable.

(c) Employees with continuous service of two years or more since date of last employment are granted a vacation of two (2) weeks during the calendar year.

An additional day of vacation is allowed in lieu of a paid holiday within a vacation period. Vacations must be taken in periods of not less than five (5) consecutive working days.

No more than two (2) weeks of paid vacation are allowed during any one calendar year. Vacations are not cumulative from year to year. Pay in lieu of vacation will not be allowed and any vacation rights, which a continuation of services might have secured, will cease upon termination from the company's services.

"Continuous service" when used in determining vacation rights shall mean the period of uninterrupted employment from the date of last employment. The following interruptions resulting in absence from work shall not have detrimental effect upon the employee's "continuous service" record and shall be considered as time worked for the purpose of this section which is devoted exclusively to vacations:

(1) Sickness or injury, proved by a physician's certificate, or absence due to sickness when excused by an authorized representative of the company of a combined duration not exceeding six (6) weeks during first year of employment or two (2) months after one (1) year of employment.

(2) Jury duty or compulsory appearance in Court.

(3) Vacations in accordance with the provisions of this section.

(4) Leave of absence of two (2) weeks or less during any one year.

Leave of absence in excess of two (2) weeks for reason other than disabling illness or accident will reduce vacation rights by one-half ( $\frac{1}{2}$ ) day for each such excess two (2) weeks of absence. The company's record in respect to last employment date and continuous service shall be conclusive.

Vacations will be assigned by the Department Manager and insofar as possible consideration will be given to the employee's selection of the vacation time. Employees with seniority will have first choice for vacation dates, but the Department Manager shall not be required to consider seniority for the second week of vacation if an employee desires to split the vacation, or if after selection is made a change in schedule is desired.

The company reserves the right to schedule vacations in accordance with the conditions and requirement assuring uninterrupted operating service.

### Office Hours

The general office hours are from 8 a. m. to 5 p. m. Monday through Friday. Employees in the Mailing Department are on special schedules with office hours extending from 7:0 a. m. to approximately 6 p. m.

A general lunch period of one hour and ten minutes from 11:50 to 1 o'clock is observed. Inasmuch as the company presently has under construction a cafeteria for the convenience of its employees, a shorter lunch

period will be established upon the opening of such cafeteria. The work in some Departments requires that one or more employees remain at work during the regular lunch period. Special lunch periods are designated for these employees by the Department Managers.

The general work schedule is eight (8) hours per day, Monday through Friday.

The company will establish other work schedules or discontinue same at such times as may be necessary in its discretion.

### Overtime

When overtime work is authorized, such overtime work will be distributed equally among employees of the section or department, but the company reserves the right to put other employees of its own choosing on such work, if in the option of the company, such action becomes necessary.

Overtime work will be remunerated, in accordance with the provisions of the Federal Fair Labor Standards Act, for hours worked in excess of 40 hours in any one week.

### Punctuality

Employees are expected to be at their desks at the beginning of each work period in the morning and the end of the lunch period. The beginning of the general work period is announced by the ringing of a bell from a master clock. Employees who are required to report for work at other than the general work period similarly must report on time and be ready for work at their desks at the required time. If circumstances force an employee to be late for work for any work period, the employee is requested to report the reason for being late to the manager or designated supervisor.

### Recording of Time Worked

Employees are required to personally record reporting to work and leaving from work on time cards by means of mechanical time recorders. No one is permitted to punch in or punch out any time card, except his own.

The company will arrange to remove all time cards at the beginning of each work period of employees who have not reported in at that time. Any late comers must ask for their card from the designated supervisor or manager and explain the cause for being late before they are permitted to punch in. Neither tardiness nor quitting of work before the end of the work period without previous permission is permitted.

In some departments where mechanical time recorders are not provided, the Supervisor or Department Manager will attend to the recording of the time cards, all other conditions, duties and rights remaining the same.

Employees are expected to continue working until the quitting bell announces the end of the working period. Quitting of work before the end of the work period is prohibited.

### Absence from Work on Account of Illness

If illness prevents an employee from reporting to work, he or a member of his family must notify the Department Manager by 9 a. m. of that day. The employee is expected to keep the Department Manager informed of the progress so that he can arrange for the work that must be taken care of. "Inability to notify" will not be required to be accepted as an excuse for not notifying the company.

Absence from work for any cause other than illness of the employee must have been authorized previously by the company in accordance with the rules and conditions dealing with leave of absence.

### Physical Fitness

Employees should endeavor to keep themselves in good physical condition. For their own protection they are not expected to work if they are ill. Should employees become ill or injured while on duty, they must report the fact to the Department Manager immediately.

### Leaving Building during work period

Employees are not permitted to leave the building during their work period, without permission from the Department Manager. Consent to leave the building will be given in extenuating circumstances only and at the company's exclusive discretion.

### Leaving Department during work period

The work of certain designated employees require them to go to other floors or other departments of the company. All other employees not specifically so designated must get permission from the Department Manager before leaving their own department. It is necessary that "inter-office" messenger service or telephone service be used in all possible instances for the distribution or collection of communications or services.

### Personal Mail

Employees must arrange to receive their personal mail at their home address. The company with its enormous volume of mail cannot accept the responsibility for delivery and distribution of such personal letters or mails.

### Outside Telephone Service

Due to the company's nationwide business transactions, it is not possible to allow employees unrestricted use of the telephone. Telephone calls to employees will be taken by the Department Manager who will take the message.

for the employee. The Manager may allow the employee to answer the call if the message is deemed of sufficient importance. Employees are requested and expected to inform their families and friends not to call them during working periods, emergencies excepted. It is also necessary to refrain from using the company's phone for personal calls during lunch periods.

**Salesmen, Collectors, Solicitors, Visitors and etc.**

The company does not allow salesmen, collectors or solicitors to contact or interview employees during working periods. This applies to solicitations of any kind or character or for any purpose whatsoever during working hours on the company's premises.

Employees are not allowed to receive visitors of any kind during working hours.

**Lotteries, Raffles, Pools**

Lotteries, raffles, wagering pools of all kinds by employees are strictly prohibited.

**Conduct of Employees**

Employees are not allowed to attend to personal business during office hours. Writing of personal letters, reading of newspapers and magazines, or similar activities not pertaining to the company's business are prohibited.

Visiting with other employees in the employees own department or in other departments is not allowed.

When an employee finishes the work assigned to him, he should immediately so report to his supervisor. Prolonging work unnecessarily reflects unfavorably and will lead to termination of services.

Smoking during office hours is not permitted. Use of alcoholic drink during office hours and lunch periods is strictly prohibited. Soft drinks are available throughout the company at strategic places. No loitering around the machines dispensing these soft drinks is allowed. Similarly no loitering around water fountains is permitted.

Employees are expected to so arrange their personal affairs that creditors will not call them during office hours, or call on an officer of the company in regard thereto. Employees are requested not to loan money to or endorse notes for other employees in the company.

Employees should not make statements in regard to the company, its business or insurance policies without determining first that the statements are correct. Misstatements reflect unfavorably on the company and on the employees of the company.

[Marginal Notation] Violation of Free Speech.

#### Company Business Confidential

The company has a right to expect that its business be considered confidential. Information on any subject dealing with the company's business transactions must be held in strict confidence. The company's business must not be discussed either inside or outside the office except with authorized persons.

#### Cooperation by Employees.

The proper functioning and efficiency of the Home Office operations depend to a considerable degree upon the cooperation and harmony among its employees. The work of each employee is important and fits into a fixed pattern. Every effort should be made by each employee to cooperate and work in harmony with other employees in his department and in other departments of the company. Any employee who feels that his own particular

task is his only responsibility is thereby limiting his own success for promotion to more responsible positions. Cooperation and harmony with other employees are major factors for an employee's progress and job satisfaction.

#### Amendments and Additions to Rules

The company retains and shall have the right to establish new rules and practices or amend existing rules and practices or cancel existing rules and practices whenever from time to time in its discretion such action is deemed advisable.

[Marginal Notation] 2A.

#### Enforcement of Rules

The company must rely on its employees to accept and observe the rules, practices and regulations it deems necessary for the conduct of its employees, the direction of its affairs and the enforcement of discipline. The company similarly relies on its employees to accept and observe new and additional rules and practices or changes in old rules or practices as it may deem necessary from time to time.

[Marginal Notation] 2A.

Disregard or violations of any rules and practices, will subject the employee to disciplinary action including discharge from the service of the company. The company reserves to itself the exclusive right to take whatever action it deems advisable in such matters.

[Marginal Notation] 2A.

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**In the Supreme Court of the United States**

OCTOBER TERM, 1951

**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

**v.**

**AMERICAN NATIONAL INSURANCE COMPANY**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**



# INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	12
Reasons for granting the writ	13
Conclusion	19
Appendix	20

## CITATIONS

### Cases:

<i>Bethlehem Steel Company</i> , 89 NLRB 341, enforcement denied, June 7, 1951 (C.A.D.C.)	15
<i>Electric Railway &amp; Motor Coach Employees, etc. v. Wisconsin Employment Relations Board</i> , 340 U. S. 383	13, 18
<i>Hartsell Mills Co. v. National Labor Relations Board</i> , 111 F. 2d 291	17
<i>H. J. Heinz Co. v. National Labor Relations Board</i> , 311 U. S. 514	14
<i>Inland Steel Co. v. National Labor Relations Board</i> , 170 F. 2d 247, certiorari denied, 336 U. S. 960	19
<i>National Labor Relations Board v. J. H. Allison &amp; Co.</i> , 165 F. 2d 766, certiorari denied, 335 U. S. 814	18
<i>McQuay-Norris Mfg. Co. v. National Labor Relations Board</i> , 116 F. 2d 748, certiorari denied, 313 U. S. 565	17
<i>National Labor Relations Board v. Mexia Textile Mills</i> , 339 U. S. 563	10
<i>National Labor Relations Board v. George P. Pilling &amp; Son Co.</i> , 119 F. 2d 32	14
<i>National Labor Relations Board v. Pool Manufacturing Co.</i> , 339 U. S. 577	10
<i>National Labor Relations Board v. Reed &amp; Prince Mfg. Co.</i> , 118 F. 2d 874, certiorari denied, 313 U. S. 595	17
<i>Richfield Oil Corp. v. National Labor Relations Board</i> , 143 F. 2d 860	18
<i>W. W. Cross &amp; Co. v. National Labor Relations Board</i> , 174 F. 2d 875	19

### Statutes:

National Labor Relations Act, as amended (61 Stat. 136, 20 U. S. C., Supp. III, 151, <i>et seq.</i> ):	
Section 8 (a) (5)	13, 20
Section 8 (d)	13, 15, 20
Section 9 (a)	15, 20



8

# In the Supreme Court of the United States

OCTOBER TERM, 1951

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No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN NATIONAL INSURANCE COMPANY

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Fifth Circuit entered on February 5, 1951 (R. 189-193),\* petition for rehearing denied April 2, 1951 (R. 197), in so far as it sets aside a portion of an order issued by the Board against the American National Insurance Company (R. 153-155).

## OPINIONS BELOW

The opinion of the Court of Appeals (R. 89-193).

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\* References to the three separately paginated printed volumes which comprise the record before this Court are as follows: for the Transcript of Record in the court below, "R."; for the Appendix to the Board's brief in the court below, "B.A."; for the Appendix to the Company's brief in the court below, "P.A."

is not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 149-162) are reported at 89 NLRB, No. 19.

#### JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1951. Petition for rehearing was denied on April 4, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

#### QUESTION PRESENTED

The question presented is whether the employer violated Section 8 (a) (5) of the Act by refusing to enter into any contract with a union unless the union agreed to include therein a clause waiving its statutory right to bargain about certain terms or conditions of employment.

#### STATUTE INVOLVED

The statutory provisions principally involved are Sections 8 (a) (5), 8 (d), and 9 (a) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 151, *et seq.*). The pertinent provisions are set out in the Appendix, *infra*, pp. 20-21.

#### STATEMENT

Pursuant to a representation proceeding under Section 9 of the Act the Board, on September 2, 1948, certified the Office Employees International Union, AFL, Local No. 27, herein called the Union,

as the exclusive bargaining representative of respondent's office employees in an appropriate bargaining unit (R. 166-167; 40-41). Thereafter, between November 30, 1948, and the time of the hearing before the Trial Examiner on July 26, 1949, the parties engaged in negotiations with respect to a collective agreement (R. 149, 167-171; B. A. 23-24). At the first meeting the Union submitted a proposed contract covering all principal matters except wages, with a view toward reaching tentative agreement on other matters before discussing a wage scale (R. 167; B. A. 25-26, 36-37, P. A. 48-60). No agreements were reached either at this meeting or at the second meeting, held on December 15, at which the Union proposed an increased wage rate schedule (R. 167; B. A. 39-40, P. A. 60-63). Thereafter negotiations were recessed to January 10, 1949, to give respondent time to study the Union's proposals (R. 167; B. A. 40-41).

At the January 10 meeting, respondent proposed that the following "management prerogative clause" be incorporated in the contract (R. 167-168; B. A. 42-43):

The right to select, hire, to promote, demote, discharge, discipline for cause, to maintain discipline and efficiency of employees, and to determine schedules of work is the sole prerogative of the Company and the Company's decision with respect to such matters shall never be the subject of arbitration.

The Union objected on the ground that if it accepted this clause it would be abdicating the bargaining rights secured it by the Board's certification (R. 168; B. A. 43-44, P. A. 16). From this time on throughout the negotiations, however, respondent took the position that it would enter into no contract which did not contain its prerogative clause.

At two further conferences on January 11 and 12, the Union attempted to bypass the prerogative clause temporarily in order to secure agreement on other proposed provisions (R. 168; B. A. 45-46). This attempt proved unsuccessful because, as the Board found (R. 168; B. A. 46-47), the proposed prerogative clause, which respondent insisted must be incorporated in any contract with the Union, "so pervaded the field of bargaining that all paths of discussion appeared to be blocked by it."<sup>1</sup>

Respondent's attorney and principal negotiator stated that "if the Union will agree to accept that prerogative clause, I can guarantee you a contract within an hour or two" (B. A. 47). The Union replied that such a contract would be worthless since the clause empowered the Company to change rates of pay unilaterally, to arrange work schedules at any time without regard to shift differentials, and to demote and discipline "for cause"

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<sup>1</sup>The only agreements reached related to such undisputed matters as a recognition clause, a no-strike clause, and elimination of physical examination of new employees (R. 168; B. A. 50).

without any definition of that term (*ibid.*). Respondent finally stated that it could not negotiate any further until the Union agreed to the "prerogatives of management," and added that under the Taft-Hartley Act it "did not have to recede from any position," and that therefore the negotiations were "deadlocked." The Union denied that there was a deadlock, and suggested an adjournment so that the conferees could study each other's proposals and evolve some compromise on the prerogative clause problem (R. 168; B. A. 47-49).

The next conference was held on January 18, 1949 (R. 168; B. A. 51). Respondent continued to insist on the prerogative clause, suggesting that if it administered the clause unfairly, the Union would have recourse to the Board, and that consequently it was unnecessary to provide for arbitration of disputed Company decisions taken pursuant to the clause (R. 168; B. A. 51-52). Respondent expressed its willingness to contract that the terms of the Fair Labor Standards Act and other applicable statutes would govern the rights of employees where pertinent, but said that it would not agree to provisions going beyond such requirements (R. 168; B. A. 52). At this meeting respondent submitted a set of counterproposals to the Union (R. 169; B. A. 53-58, P. A. 64-79), which provided, in the main, for continuance of the existing wage scale, and leave policy, and restated in

greater detail the management prerogatives insisted upon by the Company. The new prerogative clause read as follows (R. 168; P. A. 66-67):

Nothing in this agreement shall be deemed to limit or restrict the company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge or otherwise discipline an employee for violation of such rules or for other proper cause.

The right to select and hire, to promote to a better position, to discharge, demote, or discipline for cause, and to maintain discipline and efficiency of employees and to determine the schedules of work is recognized by both union and company as the proper responsibility and prerogative of management to be held and exercised by the company, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the company in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration.

The next day, January 19, the prerogative clause again was the principal topic of discussion. The

Union reluctantly agreed to accept the first paragraph of the clause, but continued to assert that the inclusion of the remainder in a contract would make such agreement meaningless and subvert the Union's status as bargaining representative (R. 169-170; B. A. 58-62). Respondent stated that it had a right to insist on the inclusion in a contract of any clause it desired, and that unless the Union agreed to the amended "prerogative clause" there would be no contract (B. A. 59). Respondent added that this clause was the "meat of the contract" and that if the Union accepted it a contract would be signed in "short order" (R. 170; B. A. 60-61).

On January 28, 1949, the Union filed a charge with the Board alleging, *inter alia*, that the Company had refused to bargain in good faith in violation of Section 8 (a) (5) of the Act (B. A. 62). Nevertheless, negotiations were resumed on February 7, 1949, with both parties maintaining their previously expressed positions with respect to the inclusion of respondent's prerogative clause in any contract (R. 170; B. A. 63-65). With respect to other matters, respondent took the position that no law required it to raise wages, grant a better sick-leave plan, or negotiate an arbitration clause (*ibid.*).

The Company and Union continued to meet until the date of the Board hearing on July 26, 1949 (B. A. 24, 104). The conferees remained in disagreement, however, on the issue of the preroga-

tive clause which the Company continued to insist upon as a condition to concluding a contract. At a meeting held on March 11, 1949, the Union requested a copy of the Company's rules and regulations in order to determine more accurately the probable effect of petitioner's prerogative clause (B. A. 94-95, 140). These rules gave the Company complete power "in its discretion" to "establish new rules and practices," and "amend" or "cancel" existing rules and practices (B. A. 141-154). The regulations also reserved to the Company the "exclusive right" to take "whatever action it deems advisable," including discharge, for violations of the rules (B. A. 154). In addition, under its regulations, the Company possessed the sole right to determine whom to "promote or demote," and the "exclusive right to transfer, temporarily or permanently, to any department, employees of other departments regardless of seniority" (B. A. 142-143). The Company also retained the "exclusive right to approve or disapprove requests for leave of absence," and to distribute overtime work to "employees of its own choosing . . . if in the opinion of the Company, such action becomes necessary" (B. A. 144, 149). The Union representatives declared that these rules, when considered in conjunction with the proposed prerogative clause, made any collective bargaining agreement covering any of these points meaningless (B. A. 96).

At a meeting held on May 19, 1949, the Union submitted a complete set of new counterproposals to the Company, accepting respondent's existing wage scale, and vacation and sick leave schedule (R. 170-171; B. A. 83-84). Respondent's prerogative clause was agreed to with a proviso that respondent exercise its prerogative in a "fair and just manner" (R. 170-171; B. A. 97-98, P. A. 108). Respondent rejected the compromise on the ground that by its terms, decisions taken by the Company pursuant to the prerogative clause would still ultimately be subjected to arbitration (R. 171; B. A. 97-98). Respondent repeated its assertion that it would never condition its prerogative on arbitration, and that no law required it to (R. 170-171; B. A. 97-98).

At various times during the negotiations between November 1948 and May 1949, respondent, without consulting or notifying the Union, established new night shifts in several departments of the office. An hourly wage of one dollar was instituted for workers employed on the new shifts, in contrast to the \$85 per month starting salary for day shift workers (R. 149; B. A. 119-120, 135-137). When the Union objected to respondent's unilateral action in this regard, respondent stated that its management prerogative permitted the taking of such action without prior consultation with the Union (B. A. 124-125). Similarly, while the negotiations were still in progress, respondent, without

consulting the Union, instituted a new system of staggered lunch hours<sup>2</sup> (R. 149; B. A. 128-131).

After issuance of the Trial Examiner's intermediate report and before the Board's decision, respondent and the Union executed a contract containing, among other things, a prerogative clause not materially different from that insisted upon by respondent throughout the negotiations discussed above (R. 152; 121-143).<sup>3</sup>

The Board found (R. 149) that, by the prerogative clause, respondent "sought to reserve to itself the exclusive right to determine unilaterally such terms and conditions of employment as working rules, work schedules, the establishment of extra shifts, lay-off policy, lunch periods, the granting of leave of absence, and the distribution of overtime." The Board concluded (R. 150) that, since

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<sup>2</sup> Before changing the lunch hour Dribell, respondent's representative, did ask Stafford, the Union's principal negotiator, if he personally had any objection to the proposed change. Stafford replied that he did not personally care, but that the proposal should be first discussed with the official Union negotiating committee. This respondent failed to do (B. A. 128-131).

<sup>3</sup> Respondent moved the Board to dismiss the refusal-to-bargain charges on the ground that this agreement rendered the charges moot (R. 152; 113-121). The Board denied the motion on the ground (R. 152) that, even assuming that respondent had finally abandoned its unlawful conduct, "the discontinuance of unfair labor practices does not render moot charges based thereon." *National Labor Relations Board v. Mexia Textile Mills*, 339 U. S. 563, 567; *National Labor Relations Board v. Pool Manufacturing Co.*, 339 U. S. 577, 581-582. The Board found further (R. 152) that effectuation of the policies of the Act required that respondent be directed to cease and desist from engaging in the conduct which the Board found to be violative of the Act.

the subjects covered by the prerogative clause affected "terms and conditions of employment", they were subjects of compulsory bargaining under the Act and, accordingly, respondent's "demand for the prerogative clause as a condition to making a contract . . . [was] in derogation of the Union's bargaining rights secured to it by Section 9 (a) as the exclusive representative of the Respondent's employees and therefore constituted . . . per se [a] violation . . . of Section 8 (a) (5) and (1)" of the Act, quite apart from any question of respondent's good faith. The Board found also (R. 149-150) that respondent's action in establishing new work shifts and changing the employees' lunch period, while negotiations were in progress without consulting or notifying the Union, was in violation of Section 8 (a) (5) and (1) of the Act. In addition, the Board found (R. 150-152) that respondent's whole course of dealing with the Union, including its refusal to enter into any contract unless the Union agreed to the restrictive prerogative clause, constituted an unlawful refusal to bargain in good faith.<sup>4</sup>

To remedy the violation of the Act manifested by respondent's refusal to execute any contract which did not contain the restrictive prerogative clause,

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<sup>4</sup> The Board also found (R. 153, 161-163) that respondent had violated Section 8 (a) (1) of the Act by interrogating employees concerning their union activities and threatening economic retaliation against them for such activities. This finding was sustained by the court below (R. 189-190, 193), and no issue with respect thereto is presented.

the Board's order (Par. 1 (a), R. 153) required respondent to cease and desist from refusing to bargain collectively with the Union "by insisting as a condition of agreement, that the said Union agree to a provision whereby the Respondent reserves to itself the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment."

The court below, while sustaining the Board's finding that respondent's unilateral action with respect to the work shifts and lunch period violated Section 8 (a) (5) of the Act (R. 153, 161-163, 192),<sup>5</sup> held (R. 191-192), that the Board "was wrong in its . . . conclusion that the Respondent, by insisting on the so-called prerogative clause as a condition of agreement, failed to perform its statutory obligation to bargain," and refused to enforce paragraph 1 (a) of the Board's order (R. 153) which required respondent to cease and desist from such conduct.

#### SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that under Section 8 (a) (5) of the Act an employer may refuse to enter into any contract with a union unless the union agrees to include therein a clause waiving its statutory right to bargain about certain terms or conditions of employment.

<sup>5</sup> No review of this holding has been sought.

2. In not enforcing paragraph 1 (a) of the Board's order.

#### REASONS FOR GRANTING THE WRIT

1. The decision below permits employers in effect to refuse to bargain about certain terms and conditions of employment as to which, under Section 8 (a) (5) of the Act, the employer owes an obligation to bargain. There is no question but that work schedules, and other matters covered by the Company's "prerogative" clause, are within the area of compulsory collective bargaining as defined by Section 8(a) (5) and 8 (d). In *Electric Railway & Motor Coach Employees, etc. v. Wisconsin Employment Relations Board*, 340 U. S. 383, 399, this Court, citing the Board's decision in the instant case, held that "problems of work scheduling and shift assignment" are matters on which employers are required by the National Act to bargain collectively. And the court below, in holding that the employer violated Section 8 (a) (5) by unilaterally establishing new work shifts without consulting the Union, apparently recognized that an employer may not, consistently with the National Act, refuse to bargain collectively on this subject.

From the outset of negotiations the Company, insisting that these matters fell within the area of "management prerogative" rather than the area of collective bargaining, repudiated its obligation to bargain collectively with respect to them. The

Company refused to submit the subject of work schedules, among other conditions of employment, to the process of collective bargaining; it refused in advance even to consider negotiating with the Union as to what the work schedules should be.

The Company aggravated its refusal to treat shift schedules, etc., as a bargaining issue by conditioning the execution of any contract upon the Union's acquiescence in the Company's position that there should be no bargaining as to these subjects. This conduct compounded, rather than, as the court below apparently believed, minimized the illegality of the Company's stand. The statutory obligation to bargain with the exclusive representative in good faith and to embody terms and conditions which are agreed upon in a contract (*H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514), is unconditional and may not be evaded by the imposition of private conditions. The "Act guarantees to the employees the right to bargain collectively \* \* \* and it is not for the employer to restrain or interfere with the exercise of that right by insisting upon unwarranted conditions." *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C. A. 3).

The condition here exacted by the Company for performance of its statutory duty to bargain collectively was the sacrifice by the Union of its statutory right to bargain about shift schedules. If the decision below stands, employers may unilaterally narrow the area of terms and conditions on which

bargaining is required under the Act by refusing, as the Company did in this case, to execute any contract unless the employer is released from his statutory obligation to bargain on one or more subjects. To sanction this technique is to compel employees to surrender one portion of their statutory rights as the price of enjoying another portion.<sup>6</sup> By this device the bargaining obligation is robbed *pro tanto* of its effectiveness as an instrumentality of industrial peace, and the rights which Congress conferred upon employees are whittled away.

The court below evidently believed that the employer's conduct in the instant case was warranted by the principle, embodied in Section 8 (d), that the obligation to bargain collectively "does not compel either party to agree to a proposal or require the making of a concession."<sup>7</sup> In the Board's

<sup>6</sup> Cf. *Bethlehem Steel Company*, 89 NLRB 341, enforcement denied on other grounds, June 7, 1951 (C.A. D.C.), where the employer conditioned the making of any contract upon the union's agreement to a provision restricting its absolute right, under the second proviso to Section 9 (a) of the Act, to an opportunity to be present at the adjustment of grievances. See also, the cases cited, *infra*, pp. 17-18, dealing with the problem of employer insistence that a union waive the exercise of various rights unconditionally guaranteed by the Act.

<sup>7</sup> Section 8(d) provides:

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession \* \* \*

view, the proposals and concessions thus referred to relate only to substantive terms and conditions of employment which are governed not by the terms of the statute but by agreement of the parties. The Act does not compel agreement on any particular wage demand or require the employer to agree to any particular shift schedule. But the freedom to disagree on substantive economic issues does not comprehend freedom to repudiate the obligation, which the statute does impose, to bargain collectively upon request about shift schedules and other conditions of employment, no less than wages. It cannot be that Congress in one breath imposed the duty to bargain upon request and in the next breath provided that denial of the request should eliminate the duty.

The Board's view does not imply, of course, that a labor organization may not lawfully agree for the duration of a contract to waive its right to bargain concerning particular subjects in the area of wages, hours, and working conditions. Nor does it mean that an employer may not lawfully request the union to agree to such a provision, and offer concessions in the form of improved substantive terms in order to obtain the union's consent to such a waiver. It does mean, however, that if the union rejects the employer's offer and continues to request bargaining on these as well as all other subjects, the employer may not refuse to attempt to reach agreement about them. And it also means

that the employer may not offer performance of his statutory obligation to bargain collectively as the "concession" for the union's acquiescence in his proposal.

2. The decision below conflicts, in principle, with decisions of the Courts of Appeals for the First, Fourth, Seventh and Ninth Circuits, which hold that an employer may not exact surrender of rights which the statute unconditionally guarantees employees as the price of bargaining for a contract. In *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, certiorari denied, 313 U. S. 565, the Seventh Circuit held that the employer could not properly compel the union to bargain concerning the matter of exclusive recognition, that "the recognition required by [Section] 9 (a) is not a bargaining matter," and that a contrary view "would confer upon the employer the option of bargaining concerning a matter guaranteed the employee as of right . . . ." (*Id.*, at p. 751). In *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291, the Fourth Circuit held that the employer could not properly make the union's surrender of its right to file unfair labor practice charges with the Board, under Section 10 (b) of the Act, "a condition precedent to further negotiations" with respect to a contract (*id.*, at p. 292). In *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 883, certiorari denied, 313 U. S. 595, the First Cir-

cuit held that the employer could not properly condition the execution of any contract upon the union's agreement to a clause which effected a surrender of its right to bargain in the future for a closed-shop and check-off. And, in *Richfield Oil Corp. v. National Labor Relations Board*, 143 F. 2d 860, the Ninth Circuit held that the right of merchant sailors to have the assistance of their union "shore delegates" in settling grievances with the employer was a "necessary incident of the sailors' right of collective bargaining," that in the absence of a waiver "the right exists," and the employer, during contract negotiations, "cannot deny its exercise for the purpose of making a better bargain as to some other provision of the contract" (*id.*, at pp. 861-862).

3. The decision below raises questions of obvious large importance in the administration of the National Labor Relations Act and the effectuation of the rights of collective bargaining secured by the Act. To permit an employer to insist, as an absolute prerequisite to the consummation of an agreement, that the union abandon its statutory right to bargain collectively on fundamental matters affecting wages, hours, and working conditions is to emasculate the holdings that these are not subjects of "management prerogative" but matters on which the employer owes a statutory obligation to bargain.<sup>8</sup> The technique here employed,

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<sup>8</sup> E. G. *Electric Railway case*, *supra*, 340 U.S., at p. 399; *National Labor Relations Board v. J. H. Allison & Co.*, 165

and sustained by the court below, places in the path of bona fide collective bargaining a roadblock no less impassable than an absolute refusal to bargain at all.

#### CONCLUSION

The issue presented is of substantial importance in administration of the Act, and the decision below conflicts in principle with the decisions of other Courts of Appeals. It is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,  
*Solicitor General.*

GEORGE J. BOTT,  
*General Counsel,*  
*National Labor Relations Board.*

JUNE 1951.

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F. 2d 766, 768 (C.A. 6), certiorari denied, 335 U.S. 814; *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247, 251-253 (C.A. 7), certiorari denied, 336 U.S. 960; *W. W. Cross & Co. v. National Labor Relations Board*, 174 F. 2d 875 (C.A. 1).

## APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are as follows:

\* \* \* \* \*

SEC. 8. (a) It shall be an unfair labor practice for an employer—

\* \* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

\* \* \* \* \*

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession \* \* \*.

\* \* \* \* \*

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bar-

gaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment:

\* \* \* \* \*

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**In the Supreme Court of the United States**

OCTOBER TERM, 1951

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN NATIONAL INSURANCE COMPANY

---

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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# INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
I. The Board's findings of fact	3
II. The Board's conclusions and order	11
III. The decision below	13
Specification of errors to be urged	13
Summary of Argument	14
Argument	19
Introduction	19
I. Respondent, in violation of Section 8 (a) (5) and (1) of the Act, refused to bargain collectively concerning shift schedules and other matters comprehended by the prerogative clause	22
A. The statutory obligation to bargain collectively extends to shift schedules, working rules, and other "terms and conditions of employment" which respondent claimed the right to determine unilaterally	22
B. Respondent refused to bargain collectively concerning subjects it considered "management prerogatives"	26
II. Respondent, in violation of Section 8 (a) (5) and (1) of the Act, refused to bargain collectively concerning matters to which the collective bargaining obligation admittedly applied	32
A. By refusing to execute any contract unless the restrictive prerogative clause was included therein respondent imposed an unlawful qualification upon its offer to bargain about subjects not included in the prerogative clause	32
1. By imposing a condition precedent to the execution of any contract respondent qualified its entire offer to bargain	33
2. By demanding an extra-statutory concession as a condition precedent to bargaining respondent repudiated its obligation to bargain	36

## Argument—Continued

	Page
B. Section 8 (d) does not relieve employers of the obligation to honor bargaining rights conferred upon labor organizations by the Act	46
C. That a party may lawfully waive collective bargaining rights conferred by the Act does not excuse the commission of unfair labor practices designed to induce such a waiver	51
Conclusion	57
Appendix	59

## CITATIONS

## Cases:

<i>Alabama Marble Co.</i> , 83 NLRB 1047	52, 55
<i>Allied Yarns Corporation</i> , 26 NLRB 1440	37
<i>Aluminum Ore Company v. National Labor Relations Board</i> , 131 F. 2d 485	23, 29, 31
<i>Amalgamated Association, etc. v. Wisconsin Employment Relations Board</i> , 340 U. S. 383	16, 41
<i>Art Metals Construction Co. v. National Labor Relations Board</i> , 110 F. 2d 148	34, 35, 47
<i>Bethlehem Steel Company, Shipbuilding Division, et al.</i> , 89 NLRB 341, enforcement denied on other grounds, 191 F. 2d 340	52, 57
<i>Briggs Indiana Corp.</i> , 63 NLRB 1270	52
<i>J. I. Case Company v. National Labor Relations Board</i> , 321 U. S. 332	31
<i>W. W. Cross &amp; Company, Inc. v. National Labor Relations Board</i> , 174 F. 2d 875	23, 31
<i>Edwards v. California</i> , 314 U. S. 160	38
<i>Electric Ry. &amp; Motor Coach Employees v. Wisconsin Employment Relations Board</i> , 340 U. S. 383	14, 24
<i>Eppinger &amp; Russell</i> , 56 NLRB 1259	40
<i>Franks Bros. Co. v. National Labor Relations Board</i> , 321 U. S. 702	55
<i>General Controls Co.</i> , 88 NLRB 1341	52
<i>Globe Automatic Sprinkler Co.</i> , 95 NLRB, No. 42	52
<i>Globe Cotton Mills v. National Labor Relations Board</i> , 103 F. 2d 91	27, 49
<i>The L. Hardy Company</i> , 44 NLRB 1013	37
<i>Hartsell Mills Company v. National Labor Relations Board</i> , 111 F. 2d 291 affirming; 18 N.L.R.B. 268	35, 39
<i>H. J. Heinz Company v. National Labor Relations Board</i> , 311 U. S. 514	34
<i>Hill v. Florida</i> , 325 U. S. 538	16, 40-41
<i>Hughes Tool Company v. National Labor Relations Board</i> , 147 F. 2d 69	54

## Cases—Continued

Page

<i>Inland Steel Company v. National Labor Relations Board</i> , 170 F. 2d 247, certiorari denied, 336 U. S. 960,	23, 25, 31
<i>Jeffery-DeWitt Insulator Co. v. National Labor Relations Board</i> , 91 F. 2d 134, certiorari denied, 302 U. S. 731	49
<i>Joy Silk Mills, Inc.</i> , 85 NLRB 1263, enforced as modified, 185 F. 2d 732, certiorari denied, 341 U. S. 914	37
<i>May Department Stores Co.</i> , 59 NLRB 976, enforced, 154 F. 2d 533, certiorari denied, 329 U. S. 725	52
<i>McQuay-Norris Manufacturing Co. v. National Labor Relations Board</i> , 116 F. 2d 748, certiorari denied, 313 U. S. 565	17, 31, 35, 43, 44, 46
<i>Medo Photo Supply Corp. v. National Labor Relations Board</i> , 321 U. S. 678	41
<i>National Labor Relations Board v. Aldora Mills</i> , 180 F. 2d 580, enforcing 79 NLRB 1	39
<i>National Labor Relations Board v. J. H. Allison &amp; Co.</i> , 165 F. 2d 766, certiorari denied, 335 U. S. 814,	23, 25, 26, 29, 31, 54
<i>National Labor Relations Board v. Andrew Jergens Company</i> , 175 F. 2d 130, certiorari denied, 338 U. S. 827	49
<i>National Labor Relations Board v. Bachelder</i> , 120 F. 2d 574	25
<i>National Labor Relations Board v. Barrett Co.</i> , 135 F. 2d 959	35
<i>National Labor Relations Board v. Berkley Machine Works &amp; Foundry Co., Inc.</i> , 189 F. 2d 904	23, 27
<i>National Labor Relations Board v. Blanton Co.</i> , 121 F. 2d 564	35
<i>National Labor Relations Board v. Boss Mfg. Co.</i> , 118 F. 2d 187	25, 30
<i>National Labor Relations Board v. Burke Machine Tool Co.</i> , 133 F. 2d 618	39
<i>National Labor Relations Board v. Cape County Milling Company</i> , 140 F. 2d 543	39
<i>National Labor Relations Board v. Columbia Enameling &amp; Stamping Co.</i> , 306 U. S. 292	37
<i>National Labor Relations Board v. Corsicana Cotton Mills</i> , 178 F. 2d 344	43, 54
<i>National Labor Relations Board v. Crompton-Highland Mills, Inc.</i> , 337 U. S. 217	49
<i>National Labor Relations Board v. Dalton Telephone Co.</i> , 187 F. 2d 811, certiorari denied October 8, 1951, No. 145, this Term	34, 42, 54
<i>National Labor Relations Board v. Express Publishing Co.</i> , 111 F. 2d 588, reviewed as to scope of order, 312 U. S. 426	27

	Page
<i>National Labor Relations Board v. General Motors Corporation</i> , 179 F. 2d 221	31
<i>National Labor Relations Board v. Griswold Mfg. Co.</i> , 106 F. 2d 713	26, 30, 43
<i>National Labor Relations Board v. Highland Park Mfg. Co.</i> , 110 F. 2d 632	30, 34, 35, 47
<i>National Labor Relations Board v. Jones &amp; Laughlin Steel Corp.</i> , 301 U. S. 1	47
<i>National Labor Relations Board v. Knoxville Publishing Co.</i> , 124 F. 2d 875	27
<i>National Labor Relations Board v. Louisville Refining Co.</i> , 102 F. 2d 678, certiorari denied, 308 U. S. 568	34, 39
<i>National Labor Relations Board v. Mackay Radio &amp; Telegraph Co.</i> , 304 U. S. 333	55
<i>National Labor Relations Board v. Mexico Textile Mills</i> , 339 U. S. 563	11
<i>National Labor Relations Board v. Montgomery Ward &amp; Co.</i> , 133 F. 2d 676	28, 35
<i>National Labor Relations Board v. Morris P. Kirk &amp; Son, Inc.</i> , 151 F. 2d 490	39
<i>National Labor Relations Board v. George P. Pilling &amp; Son Co.</i> , 119 F. 2d 32	30, 39
<i>National Labor Relations Board v. Pool Manufacturing Co.</i> , 339 U. S. 577	11
<i>National Labor Relations Board v. Reed &amp; Prince Manufacturing Co.</i> , 118 F. 2d 874, certiorari denied, 313 U. S. 595	43, 44, 45
<i>National Labor Relations Board v. Register Publishing Co.</i> , 141 F. 2d 156	35
<i>National Labor Relations Board v. Somerset Shoe Co.</i> , 111 F. 2d 681	30
<i>National Labor Relations Board v. Swift &amp; Co.</i> , 127 F. 2d 30	28
<i>National Labor Relations v. Todd Co., Inc.</i> , 173 F. 2d 705	34, 54
<i>National Labor Relations Board v. Westinghouse Air Brake Co.</i> , 120 F. 2d 1064	15, 25, 30
<i>National Labor Relations Board v. Whittier Mills Co.</i> , 111 F. 2d 474	31
<i>National Labor Relations Board v. Winona Textile Mills, Inc.</i> , 160 F. 2d 201	44
<i>National Licorice Company v. National Labor Relations Board</i> , 309 U. S. 350	25, 43
<i>Old Line Life Insurance Co.</i> , 96 NLRB No. 66	52, 55
<i>Order of Railroad Telegraphers v. Railway Express Agency, Inc.</i> , 321 U. S. 342	53, 54, 57
<i>Charles E. Reed &amp; Company</i> , 76 NLRB 548	56

## Cases—Continued

	Page
<i>Richfield Oil Corporation v. National Labor Relations Board</i> , 143 F. 2d 860	53
<i>Shell Oil Company</i> , 77 NLRB 1306	57
<i>Singer Mfg. Co. v. National Labor Relations Board</i> , 119 F. 2d 131, certiorari denied, 313 U. S. 595	28, 49
<i>Sport Specialty Shoemakers, Inc.</i> , 77 NLRB 1011	37
<i>Standard Generator Service Company of Missouri, Inc.</i> , 90 NLRB 790	55
<i>Standard Generator Service Co. v. National Labor Relations Board</i> , 186 F. 2d 606	26
<i>Stewart Die Casting Corp. v. National Labor Relations Board</i> , 114 F. 2d 849, certiorari denied, 312 U. S. 680	43
<i>Tide Water Associated Oil Company</i> , 85 NLRB 1096	52
<i>Times Publishing Company</i> , 72 NLRB 676	56
<i>West Texas Utilities Company v. National Labor Relations Board</i> , 184 F. 2d 233, certiorari denied, 341 U. S. 939, rehearing denied, October 8, 1951	37
<i>Wilson &amp; Co. v. National Labor Relations Board</i> , 115 F. 2d 759	25

## Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 151, *et seq.*):

Section 1	38
Section 7	22, 38, 59
Section 8 (a) (1)	2, 43, 57, 59
Section 8 (a) (5)	2, 14, 22, 36, 43, 57, 59
Section 8 (d) 2, 14, 17, 21, 22, 23, 33, 37, 46, 47, 48, 49, 55, 59	
Section 9 (a)	2, 14, 21, 22, 25, 31, 36, 55, 60
Section 9 (f)	37
Section 9 (g)	37
Section 9 (h)	37

## Miscellaneous:

Cox & Dunlop, <i>Regulation of Collective Bargaining by the National Labor Relations Board</i> , 63 Harv. L. Rev. 389 (Jan., 1950)	23, 55
Findling & Colby, <i>Regulation of Collective Bargaining by the National Labor Relations Board—Another View</i> , 51 Col. L. Rev. 170 (Feb. 1951)	24, 56
H. Conf. Rep. No. 510, pp. 34, 35, in 1 Leg. Hist. 538, 539	50-51
H. R. 3020, 80th Cong., 1st Sess., pp. 6-10, in 1 Leg. Hist. 36-40	49
H. R. 3020, as passed, 80th Cong., 1st Sess., p. 9, in 1 Leg. Hist. 166	28

## Miscellaneous—Continued

	Page
H. Rep. No. 245, pp. 19-20, 22-23, 80th Cong., 1st Sess., in 1 Leg. Hist. 292, 310-311, 313-314	50, 56
Legislative History of the Labor Management Relations Act, 1947 (Govt. Print. Off., 1948)	50
National Labor Relations Board, <i>Thirteenth Annual Re- port</i> (Govt. Print. Off., 1949), pp. 59, 60, 61	37, 48, 56
National Labor Relations Board, <i>Fourteenth Annual Re- port</i> (Govt. Print. Off., 1950), p. 71	37
National Labor Relations Board, <i>Fifteenth Annual Re- port</i> (Govt. Print. Off., 1951), pp. 119, 121, 125	37, 48, 52
S. Rep. No. 105, on S. 1126, 80th Cong., 1st Sess., p. 24, in 1 Leg. Hist. 430	28

# In the Supreme Court of the United States

OCTOBER TERM, 1951

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No. 126

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN NATIONAL INSURANCE COMPANY

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

## OPINIONS BELOW

The opinion of the Court of Appeals, (R. I. 111-115) <sup>1</sup> is reported at 187 F. 2d 307. The findings of

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<sup>1</sup> The printed record before this Court consists of three volumes; volume one, referred to hereinafter as "R. I.," contains the pleadings, Board decision and order and the proceedings in the court below; volume two ("R. II.") contains the portions of the transcript of testimony and exhibits reprinted by the Company as an appendix to its brief in the court below; volume three ("R. III.") contains the material reprinted by the Board as an appendix to its brief in the court below. Wherever in a series of references a semicolon appears, references preceding the semicolon are to the Board's findings, succeeding references are to the supporting evidence.

fact, conclusions of law, and order of the Board (R. I. 85-107) are reported at 89 NLRB 185.

#### JURISDICTION

The judgment of the Court of Appeals was entered on February 23, 1951. A petition for rehearing was denied on April 2, 1951. The petition for writ of certiorari was filed on June 18, 1951, and granted on October 8, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) and (f) of the National Labor Relations Act, as amended.

#### QUESTION PRESENTED

Whether an employer violates Section 8 (a) (5) and (1) of the Act by refusing to enter into any contract with a union unless the union agrees to include therein a clause waiving its statutory right to bargain about selection, hire, promotion, demotion, discharge, and discipline of employees, determination of work schedules, and other terms or conditions of employment.

#### STATUTE INVOLVED

The statutory provisions principally involved are Sections 8 (a) (1) and (5), 8 (d), and 9 (a) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 151, *et seq.*). The pertinent provisions are set out in the Appendix, *infra*, pp. 59-60.

## STATEMENT

Upon the usual proceedings, under Section 10 of the Act, the Board, on April 5, 1950, issued its decision and order against respondent (R. I. 85-107).

### I. The Board's Findings of Fact

Pursuant to a representation proceeding under Section 9 of the Act, the Board, on September 2, 1948, certified as the exclusive bargaining representative of respondent's office employees in an appropriate bargaining unit, Office Employees International Union AFL, Local No. 27, herein called the Union (R. I. 96; 22-23). Thereafter, between November 30, 1948, and the time of the hearing before the Trial Examiner on July 26, 1949, the parties engaged in negotiations with respect to a collective agreement (R. I. 85-86, 96-99; R. III. 23-25). At the first two meetings the Union submitted a proposed contract covering the principal matters generally included in collective agreements (R. I. 97; R. III. 25-26, 36-37, 39-40; R. II. 48-60, 60-63). Thereafter negotiations were recessed to January 10, 1949, to give respondent time to study the Union's proposals (R. I. 97; R. III. 40-41).

At the January 10 meeting, respondent, having "given considerable thought to the character of prerogative that, in our opinion, the Company was entitled to maintain \* \* \* /as well/as \* \* \* to the character of safeguard which would make the retention of such prerogatives to which we thought

the Company entitled \* \* \* invulnerable to attack" (R. II. 32), proposed that the following "management prerogative clause" be incorporated in the contract (R. I. 97; R. III. 42-43):

The right to select, hire, to promote, demote, discharge, discipline for cause, to maintain discipline and efficiency of employees, and to determine schedules of work is the sole prerogative of the Company and the Company's decision with respect to such matters shall never be the subject of arbitration.

The Union objected that if it accepted this clause it would be abdicating the bargaining rights secured it by the Board's certification (R. I. 97; R. III. 43-44, R. II. 16). From this time on, throughout the negotiations, however, respondent took the position that it would enter into no contract which did not contain its prerogative clause.

At conferences on January 11 and 12, the Union attempted unsuccessfully to bypass the prerogative clause temporarily in order to secure agreement on other proposed provisions (R. I. 97; R. III. 45-46). The proposed prerogative clause, as the Board found (R. I. 86, 97; R. III. 46-47), "so pervaded the field of bargaining that all paths of discussion appeared to be blocked by it."<sup>2</sup>

<sup>2</sup>The only agreements reached related to such undisputed matters as a recognition clause, a no-strike clause, and elimination of physical examination of new employees (R. I. 97; R. III. 50).

Respondent's attorney and principal negotiator stated that "if the Union will agree to accept that prerogative clause, I can guarantee you a contract within an hour or two" (R. III. 47). The Union replied that such a contract would be worthless since the clause empowered the Company to change rates of pay unilaterally, to arrange work schedules at any time without regard to shift differentials, and to demote and discipline "for cause" without any definition of that term (*ibid.*). Respondent finally stated that it could not negotiate any further until the Union agreed to the "prerogatives of management," and added that under the Taft-Hartley Act it "did not have to recede from any position," and that therefore the negotiations were "deadlocked." The Union denied that there was a deadlock, and suggested an adjournment (R. I. 97; R. III. 47-49).

The next conference was held on January 18, 1949 (R. I. 97; R. III. 51). Respondent continued to insist on the prerogative clause, suggesting that if it administered the clause unfairly, the Union would have recourse to the Board, (R. I. 97-98; R. III. 51-52).. Respondent expressed its willingness to contract that the terms of the Fair Labor Standards Act and other applicable statutes would govern the rights of employees where pertinent, but said that it would not agree to provisions going beyond such requirements (R. I. 98; R. III. 52). At this meeting re-

spondent submitted a set of counterproposals to the Union (R. I. 98; R. III. 53-58; R. II. 64-79), which provided, in the main, for continuance of the existing wage scale, and leave policy, and restated in greater detail the management prerogatives insisted upon by the Company.<sup>2a</sup> The new prerogative clause read as follows (R. I. 98; R. II. 66-67):

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge or otherwise discipline an employee for violation of such rules or for other proper cause.

The right to select and hire, to promote to a better position, to discharge, demote, or dis-

<sup>2a</sup> Respondent in its counterproposal (R. II. 69) rejected the Union's proposal that "The established work week shall consist of five (5) consecutive days [eight hours in length], beginning at 8:00 a.m. Monday" (R. II. 53), on the ground that the Company "wanted to maintain flexibility and wanted the right to change those hours any time they saw fit" (R. III. 115). Similarly, because respondent desired to reserve "the right to put other employees of its own choosing on such work if, in the opinion of the Company, such action becomes necessary" (R. II. 69), respondent rejected the Union's proposal that overtime work be distributed equally to employees in the office involved (R. II. 54). Respondent also rejected the Union's proposals dealing with leaves of absences and layoffs (R. II. 52, 55, 68, 71), and the Union's request that it be furnished the results of tests given by respondent to determine whether employees were qualified for promotion on the ground that the administration of such tests was "a Company prerogative" (R. I. 101; R. III. 66-67).

cipline for cause, and to maintain discipline and efficiency of employees and to determine the schedules of work is recognized by both union and company as the proper responsibility and prerogative of management to be held and exercised by the company, and while it is agreed that an employee feeling himself to have been aggrieved by any decision of the company in respect to such matters, or the union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the company made by such top management officials shall not be further reviewable by arbitration.

By January 19, the Union reluctantly agreed to accept the first paragraph of the clause, but continued to assert that inclusion of the second paragraph would make any agreement meaningless and subvert the Union's status as bargaining representative (R. I. 98-99; R. III. 58-62). Respondent stated that it had a right to insist on the inclusion in a contract of any clause it desired, and that unless the Union agreed to the amended "prerogative clause" there would be no contract (R. III. 59-61). Respondent added that this clause was the "meat of the contract" and that if the Union accepted it a contract would be signed in "short order" (R. I. 98; R. III. 60-61).

On January 28, 1949, the Union filed a charge with the Board alleging, *inter alia*, that the Company had refused to bargain in good faith, in violation of Section 8 (a) (5) of the Act (R. I. 23-25, R. III. 62). Nevertheless, negotiations were resumed on February 7, 1949, and continued until the date of the Board hearing on July 26, 1949 (R. III. 24, 104). In February, 1949, the Union proposed that working rules be "mutually agreed to" by the parties as "a part of this contract" (R. II. 102). Respondent refused, insisting that the Union accept the prerogative clause without modification (R. II. 3-4). At a meeting held on March 11, 1949, the Union requested a copy of the Company's rules and regulations in order to determine more accurately the scope of unilateral action reserved to petitioner by the prerogative clause (R. III. 94-95, 140). These rules gave the Company complete power "in its discretion" to "establish new rules and practices," and "amend" or "cancel" existing rules and practices (R. III. 141-154). The regulations also reserved to the Company the "exclusive right" to take "whatever action it deems advisable," including discharge, for violations of the rules (R. III. 154). In addition, under its regulations, the Company possessed the sole right to determine whom to "promote or demote," and the "exclusive right to transfer, temporarily or permanently, to any Department, em-

ployees of other Departments regardless of seniority" (R. III. 142-143). The Company also retained the "exclusive right to approve or disapprove requests for leave of absence," and to distribute overtime work to "employees of its own choosing . . . if in the opinion of the Company, such action becomes necessary" (R. III. 144, 149). The Union representatives declared that petitioner's insistence upon retaining the right "to establish the rules, and without any prior notice \* \* \* change [them] \* \* \* without consulting the Union \* \* \* was not bargaining with us" (R. III. 96).

At a meeting held on May 19, 1949, the Union submitted as a tentative offer a complete set of new counterproposals to the Company, accepting respondent's existing wage scale, and vacation and sick leave schedule (R. I. 99; R. III. 83-84). Respondent's prerogative clause was agreed to with a proviso that respondent exercise its prerogative in a "fair and just manner" (R. I. 99; R. III. 97-98; R. II. 108). Respondent objected to the compromise on the ground that by its terms, decisions taken by the Company pursuant to the prerogative clause would still ultimately be subjected to arbitration (R. I. 99; R. III. 97-98). Respondent repeated its assertion that it would never condition its prerogative on arbitration, and that no law required it to do so (R. I. 99; R. III. 97-98).

At various times during the negotiations between November, 1948, and May, 1949, respondent, without consulting or notifying the Union, established new night shifts in several departments of the office. An hourly wage of one dollar was instituted for workers employed on the new shifts, in contrast to the \$85 per month starting salary for day shift workers (R. I. 85-86; R. III. 119-120, 135-137). When the Union objected to respondent's unilateral action in this regard, respondent stated that its management prerogative permitted the taking of such action without prior consultation with the Union (R. III. 124-125). Similarly, while the negotiations were still in progress, respondent, without consulting the Union, instituted a new system of staggered lunch hours<sup>3</sup> (R. I. 85-86; R. III. 128-131).

After issuance of the Trial Examiner's intermediate report and before the Board's decision, respondent and the Union, on January 13, 1950, executed a contract<sup>4</sup> containing, among other things, a prerogative clause not materially differ-

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<sup>3</sup> Before changing the lunch hour Dribell, respondent's representative, did ask Stafford, the Union's principal negotiator, if he personally had any objection to the proposed change. Stafford replied that he did not personally care, but that the proposal should be first discussed with the official Union negotiating committee. This respondent failed to do (R. III. 128-131).

<sup>4</sup> Before the Board respondent moved to dismiss the refusal-to-bargain charges on the ground that this agreement rendered the charges moot (R. I. 87; 63-67). The Board denied the motion on the ground (R. I. 87) that, even assuming that respondent had finally abandoned its unlawful conduct, "the

ent from that insisted upon by respondent throughout the negotiations discussed above (R. I. 87; 68-82).<sup>5</sup>

## II. The Board's Conclusions and Order

The Board found (R. I. 85) that, by the prerogative clause, respondent "sought to reserve to itself the exclusive right to determine unilaterally such terms and conditions of employment as working rules, work schedules, the establishment of extra shifts, lay-off policy, lunch periods, the granting of leave of absence, and the distribution of overtime." The Board concluded (R. I. 86) that, since

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discontinuance of unfair labor practices does not render moot charges based thereon." *National Labor Relations Board v. Mexia Textile Mills*, 339 U. S. 563, 567; *National Labor Relations Board v. Pool Manufacturing Co.*, 339 U. S. 577, 581-582. The Board found further (R. I. 87-88) that effectuation of the policies of the Act required that respondent be directed to cease and desist from engaging in the conduct which the Board found to be violative of the Act.

<sup>5</sup> The prerogative clause in the executed contract reads as follows (R. I. 69):

### Functions and Prerogatives of Management

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling himself

the subjects covered by the prerogative clause were "terms and conditions of employment," they were subjects of compulsory bargaining under the Act and, accordingly, that respondent's "demand for the prerogative clause as a condition to making a contract . . . [was] in derogation of the Union's bargaining rights secured to it by Section 9 (a) as the exclusive representative of the Respondent's employees and therefore constituted . . . per se [a] violation . . . of Section 8 (a) (5) and (1)" of the Act, quite apart from any question of respondent's good faith. The Board found also (R. I. 85-86) that respondent's action in establishing new work shifts and changing the employees' lunch period, while negotiations were in progress without consulting or notifying the Union, was in violation of Section 8 (a) (5) and (1) of the Act. In addition, the Board found (R. I. 86-87) that respondent's whole course of dealing with the Union, including its refusal to enter into any contract unless the Union agreed to the restrictive prerogative clause, constituted an unlawful refusal to bargain in good faith.

To remedy the violation of the Act manifested by respondent's refusal to execute any contract

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to have been aggrieved by any decision of the Company in respect to such matters, or the Union in his behalf, shall have the right to have such decision reviewed by top management officials of the Company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration.

which did not contain the restrictive prerogative clause, the Board's order (Par. 1 (a), R. I. 88) requires respondent to cease and desist from refusing to bargain collectively with the Union "by insisting as a condition of agreement, that the Union agree to a provision whereby the Respondent reserves to itself the right to take unilateral action with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment."

### III. The Decision Below

The court below, while sustaining the Board's finding that respondent's unilateral action with respect to the work shifts and lunch period violated Section 8 (a) (5) of the Act (R. I. 86, 114), held (R. I. 113-114), that the Board "was wrong in its . . . conclusion that the Respondent, by insisting on the so-called prerogative clause as a condition of agreement, failed to perform its statutory obligation to bargain," and refused to enforce paragraph 1 (a) of the Board's order (R. I. 88, 115) which required respondent to cease and desist from such conduct.

#### SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that under Section 8 (a) (5) and (1) of the Act an employer may refuse to enter into any contract with a union unless the union agrees to include therein a clause waiving its

statutory right to bargain about certain terms or conditions of employment.

2. In not enforcing paragraph 1 (a) of the Board's order.

#### SUMMARY OF ARGUMENT

### I

A. Section 8(a)(5) of the Act requires the employer, upon request, to bargain collectively with the representative of his employees concerning the subjects set out in Sections 9(a) and 8(d), namely, "rates of pay, wages, hours of employment, or other conditions of employment." The courts have uniformly recognized that the right of the employees and the obligation of the employer to bargain collectively extends to each and every matter which falls within the quoted definition, and that an employer therefore violates the Act when he refuses to bargain about any one such matter, even though he is willing to bargain about all other subjects.

The subjects on which respondent in this case refused to bargain—on the ground that their unilateral determination was the "prerogative" of management—included work schedules and working rules, and the promotion, demotion, and discharge of employees. Each of these subjects, particularly "problems of work scheduling and shift assignment" fall within the category of "terms and conditions of employment" (*Electric Railway*

& *Motor Coach Employees, etc. v. Wisconsin Employment Relations Board*, 340 U.S. 383, 399), and are therefore subjects of compulsory bargaining under the Act.

B. Throughout the negotiations respondent made it clear that under no circumstances would it enter into an agreement with the Union concerning those subjects which respondent considered "prerogatives of management." Respondent's insistence that the Union agree—as the price of obtaining a contract on other subjects—that respondent was under no obligation to bargain about the subjects enumerated in the prerogative clause, was designed to and did "foreclose in advance any possibility" (*National Labor Relations Board v. Westinghouse Air Brake Co.*, 120 F. 2d 1004, 1006 (C. A. 3)), of fixing shift schedules, working rules, lunch periods, etc., through collective bargaining. By this repudiation of its obligation to bargain collectively about shift schedules and other matters comprehended by the prerogative clause, respondent violated Section 8 (a) (1) and (5) of the Act.

## II

A. Respondent also repudiated its obligation to bargain collectively concerning subjects not comprehended by the prerogative clause, such as regular rates of pay, to which the collective bargaining obligation admittedly applies, by conditioning the

execution of any contract dealing with those subjects upon the union's acceptance of the "prerogative" clause. Since the duty to bargain collectively includes the obligation to execute a contract covering substantive terms and conditions which have been agreed upon, an employer can no more lawfully condition the execution of a contract upon the union's submission to an extra-statutory condition like the prerogative clause than he can condition the institution or continuation of negotiations upon it.

With the single exception of the court below in the instant case, the Board and every court which has considered the problem have held that an employer may not lawfully demand, as a condition precedent to performance of his own statutory duty, that the union perform an act which the statute does not require, or yield a right which the statute bestows. This Court has held that even the states may not impose conditions upon the exercise of federally protected employee bargaining rights (*Hill v. Florida*, 325 U.S. 538, 542), or reserve to unilateral employer determination issues which the National Act declares to be appropriate for collective bargaining (*Amalgamated Association, etc. v. Wisconsin Employment Relations Board*, 340 U.S. 383, 398-399). *A fortiori*, an employer may not insist, as a condition precedent to bargaining, that a union forego the exercise of a portion of its statutory rights, or agree to

exempt from the area of collective bargaining subjects which the statute places within that area.

Since the union's right to bargain about shift schedules and other matters covered by the prerogative clause is not itself a "term or condition of employment" but a privilege conferred upon employees by the statute, respondent was not entitled to require the union to "bargain" about its exercise. Certainly, respondent was not entitled to demand, as it did, that the union take less than a full measure of the rights which Congress gave it, or no rights at all. The fact that respondent presented its demand that the union waive a portion of its bargaining rights in the form of a contract clause did not transform the illegality of respondent's insistence upon that waiver into a lawful "bargaining" position. Rather, it emphasized respondent's insistence upon treating "a matter guaranteed the employees as of right," as, at best, "a bargaining matter" (*McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C.A. 7)).

B. The proviso to Section 8(d) of the amended Act, which provides that performance of the obligation to bargain collectively in good faith shall not be deemed to require either party "to agree to a proposal" or to make "a concession," upon which the court below relied, was clearly not intended to nullify the bargaining obligation itself by leaving compliance with its substantive requirements optional with either party. The proviso

merely restates the rule that the Act does not compel the parties to agree on any particular substantive terms and conditions of employment, and guards against the possibility that mere failure to agree may be regarded as an indication of "bad faith." The Act does, however, compel bargaining. To hold that a refusal "to agree" *to bargain* is immunized by the proviso would mean that Congress with one hand imposed the duty to bargain on request but with the other provided that denial of the request should eliminate the duty.

C. The fact that the union could voluntarily have waived its right to bargain about shift schedules and other matters covered by the prerogative clause, and that such a voluntary waiver would have been recognized as valid, does not excuse respondent's resort to illegal means to secure the waiver. Unless a premium is to be placed upon the commission of unfair labor practices, a "waiver" which results from an employer's refusal to recognize the union's right to bargain about the particular issues in dispute, or his refusal to bargain on other issues in the absence of a waiver, cannot be deemed either voluntary or valid. While an employer may lawfully propose that the union waive a portion of its bargaining rights, and offer economic concessions that he is free under the Act to withhold as an inducement to obtain the union's assent, he may not lawfully even compel discussion, much less compel assent.

to such a proposal, either by refusing to recognize the union's right to bargain about the issue in dispute, or by conditioning the continuation of negotiations or the execution of a contract upon it.

## ARGUMENT

### Introduction

The ~~crux~~ of this case is respondent's refusal to recognize that among the subjects covered by the clause here in issue are matters to which the statutory collective bargaining obligation applies. Throughout the negotiations respondent took the position that those subjects were matters of "management prerogative;" that it had a right to dispose of them unilaterally; and that it would under no circumstances enter into any substantive agreement with the Union about them. Respondent avowedly predicated its action in instituting new shift schedules and a system of staggered lunch hours on the premise that such matters were the prerogative of management (*supra*, pp. 9-10), and the contract clause which it drafted explicitly set forth respondent's view that "The right [*inter alia*] to determine the schedules of work is \* \* \* the proper responsibility and prerogative of management to be held and exercised by the Company \* \* \*" (*supra*, p. 6).

Not only did respondent cling tenaciously to this restricted and, as we shall show, *infra*, pp. 22-26, erroneous view of its collective bargaining obligation, it made the Union's acceptance of this view

the indispensable condition for the execution of any contract at all. Time and again, as the facts set forth in the Statement, *supra*, pp. 4-8, show, respondent insisted that it would execute no contract, unless the Union agreed to the "prerogatives of management" as embodied in the "prerogative" clause.<sup>6</sup> As the Board observed (R. I. 86), "Respondent's concepts concerning its management prerogatives so pervaded the negotiations that every effort by the Union to bypass this issue and proceed with other matters was met with frustration." On the other hand, only respondent's insistence that the Union acquiesce in its concept of "management prerogatives" stood in the path of execution of a contract, as clearly appears from the frank statement of respondent's attorney during the negotiations that "if the Union will agree to accept that prerogative clause, I can guarantee you a contract within an hour or two" (R. III. 47).

In sum, respondent repudiated collective bargaining entirely with respect to those matters which it deemed to lie within its "management prerogative" and refused to perform its obligation to bargain on other matters, which admittedly lay within the area of mandatory collective bargaining, unless the Union acquiesced in that repudiation.

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<sup>6</sup> Respondent defended its adamance on the ground that under the Taft-Hartley Act it "did not have to recede from any position" and that, therefore, unless the Union acquiesced in the condition demanded by the Company, the negotiations were "deadlocked" (R. I. 97; R. III. 47-49).

The court below apparently concurred in the Board's finding, *supra*, pp. 11-12; that shift schedules and other matters covered by respondent's "prerogative" clause are comprehended by the statutory phrase "rates of pay, wages, hours of employment, or other conditions of employment" (Section 9 (a), cf. Section 8 (d)); that the collective bargaining obligation imposed by the Act extends to those matters; and that the fundamental position upon which respondent predicated its entire course of conduct was therefore erroneous. The court nevertheless held (R. I. 113-114), that the employer "had a right" to insist that the Union concur in its erroneous view and to make its concurrence therein "a condition of agreement." Accordingly, the court treated the Company's "steadfastness" in insisting upon the prerogative clause as the mere equivalent of the Union's vigorous opposition to it (R. I. 114).

This decision, we submit, condones adamant refusal to bargain about *some* "terms and conditions of employment" as constituting fulfillment of the employer's duty to bargain about *all* terms and conditions of employment. It permits employers to fragmentize the bargaining rights conferred upon employees by the Act by making their enjoyment of some rights contingent upon their abandonment of others. To approve this coercive technique is to rob the collective bargaining obligation of its full content, and to impair its effectiveness as an instrumentality of industrial peace. Unless the Act is to

be construed as self-defeating, it cannot be that reservation to the employer of a right to "bargain" and to refuse concessions (Section 8 (d)) sanctions this device for easy invasion of employee rights and evasion of the employer's corresponding obligations.

**I. Respondent, in Violation of Section 8 (a) (5) and (1) of the Act, Refused to Bargain Collectively Concerning Shift Schedules and Other Matters Comprehended by the Prerogative Clause**

A. *The statutory obligation to bargain collectively extends to shift schedules, working rules, and other "terms and conditions of employment" which respondent claimed the right to determine unilaterally.*

The subject matter of the right to bargain collectively conferred upon employees by Section 7, and of the correlative obligation imposed upon employers by Section 8 (a) (5), is defined in Sections 9 (a) and 8 (d) of the Act. Section 9 (a) provides that the representatives chosen by a majority of the employees in an appropriate bargaining unit "shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to *rates of pay, wages, hours of employment, or other conditions of employment*" (Italics added). This definition of the content of collective bargaining is specifically incorporated in Section 8 (a) (5), which provides that it shall be an unfair labor practice for an employer

"to refuse to bargain collectively with the representatives of his employees, *subject to the provisions of section 8(a)*" (Italics added). In addition, Section 8 (d), which was added to the Act by the 1947 amendments, defines the duty to bargain collectively to mean

. . . the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith *with respect to wages, hours, and other terms and conditions of employment* \* \* \* [Italics added.]

Recognizing that both the right and the obligation to bargain collectively extend to every matter which falls within the italicized definitions, the courts have uniformly held, both before and after enactment of the amended Act, that an employer who refuses to bargain collectively on any one subject within the defined category thereby violates the Act, even though he is entirely willing to bargain on all other subjects.<sup>7</sup>

<sup>7</sup> *E.g., Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247, 250-251 (C. A. 7), certiorari denied, 336 U. S. 960 (employee pension and retirement plan); *W. W. Cross & Co. v. National Labor Relations Board*, 174 F. 2d 875, 877-878 (C. A. 1) (employee group health insurance plan); *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d 766, 768 (C. A. 6), certiorari denied, 335 U. S. 814, and *National Labor Relations Board v. Berkley Machine Works & Foundry Co., Inc.*, 189 F. 2d 904, 906, 907-908 (C. A. 4) (individual merit wage increases); *Aluminum Ore Co. v. National Labor Relations Board*, 131 F. 2d 485, 486-487 (C. A. 7) (wages). Although Cox and Dunlop, *Regulation of Collective Bargaining by the National Labor Relations Board*, 63 Harv. L. Rev. 389 (Jan., 1950), dispute that the

The subjects which respondent claimed the right to determine unilaterally, and therefore to refuse to fix by agreement with the Union, indisputably fall within the statutory definitions, as the Board found (R. I. 86). Those subjects, as defined in the amended "prerogative" clause, included *supra*, pp. 6-7, the establishment of work schedules and working rules, and the promotion, demotion and discharge of employees, each of which pertains to "terms" or "conditions" of employment. In *Electric Railway & Motor Coach Employees, etc. v. Wisconsin Employment Relations Board*, 340 U. S. 383, 399, this Court, citing the Board's decision in the instant case, held that "problems of work scheduling and shift assignment" are matters on which employers are required by the National Act to bargain collectively. And the court below, in upholding the Board's finding that respondent violated Section 8 (a) (5) of the Act by unilaterally establishing new work shifts and pertinent wage rates without consulting the Union (R. I. 114), apparently recognized that the establishment of new

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italicized phrases in Sections 9 (a) and 8 (d) define the subjects of collective bargaining (*id.*, pp. 393-397), they concede that "it is probably too late in the day to challenge successfully the National Labor Relations Board's present practice of defining the scope of collective bargaining." We submit that the unanimous view of the Board and the courts that the function of the italicized phrases is to define the subjects of collective bargaining is not only correct but that it is the only view which gives meaning to their inclusion in the statute. The fallacies of the Cox-Dunlop position are discussed in Findling and Colby, *Regulation of Collective Bargaining by the National Labor Relations Board—Another View*, 51 Col. L. Rev. 170 (Feb. 1951).

shift schedules is a subject on which an employer may not lawfully refuse to bargain.<sup>8</sup> Indeed, in so far as respondent construed its "prerogative" as authorizing unilateral establishment of wage rates for new work shifts,<sup>9</sup> it invaded the area of "rates of pay" and "wages" which the statute explicitly places within the compulsory bargaining category. Section 9 (a) of the Act; *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247, 250-253 (C. A. 7), certiorari denied, 336 U. S. 960; *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied, 335 U. S. 814; *National Labor Relations Board v. Boss Mfg. Co.*, 118 F. 2d 187, 188-189 (C. A. 7).

In addition, the courts have uniformly held that the category "terms and conditions of employment," comprehends the establishment of working rules, and the promotion, demotion and discharge of employees. *National Licorice Company v. National Labor Relations Board*, 309 U. S. 350, 360; *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247, 252 (C. A. 7), certiorari denied, 336 U. S. 960; *National Labor Relations Board v. Bachelder*, 120 F. 2d 574, 577 (C. A. 7); *National Labor Relations Board v. Westing-*

<sup>8</sup> See also *Wilson & Co. v. National Labor Relations Board*, 115 F. 2d 759, 763 (C. A. 8).

<sup>9</sup> Although respondent, during the course of negotiations, professed to be willing to bargain about the wage rates applicable to unilaterally established work shifts (R. III. 124-125), in practice it set new and higher wage rates for these shifts without consulting the Union (R. I. 85; R. III. 119-121, 135-137).

*house Air Brake Co.*, 120 F. 2d 1004, 1006 (C. A. 3). Cf. *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied, 335 U. S. 814; *Standard Generator Service Company v. National Labor Relations Board*, 186 F. 2d 606, 607-608 (C. A. 8).

Thus, if, as we shall show, respondent "refused to bargain collectively" with respect to work schedules, working rules, and the promotion, demotion and discharge of employees, its conduct in this respect *ipso facto* violated Section 8 (a) (5) and (1) of the Act.

B. *Respondent refused to bargain collectively concerning the subjects it considered "management prerogatives"*

Actuated by the conviction that the law reserved to management the right to deal unilaterally with the subjects comprehended by the "prerogative" clause, respondent's "mind," throughout the negotiations, remained "hermetically sealed against even the thought"<sup>10</sup> of bargaining with the Union about them. (R. I. 86-87). It refused flatly to fix shift schedules, lunch periods, working rules, etc., by agreement with the Union (*supra*, pp. 7-8), because it insisted upon retaining a free hand to change those terms and conditions of employment unilaterally at any time.<sup>11</sup> On these subjects the

<sup>10</sup> *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 723 (C. A. 3).

<sup>11</sup> It is universally recognized that the duty to bargain

only thing respondent offered the Union was an opportunity to agree that it had no right to bargain, and that respondent had no obligation to bargain. This kind of an "offer" to bargain is, in reality, no offer at all. *National Labor Relations Board v. Berkley Machine Works & Foundry Co., Inc.*, 189 F. 2d 904, 907 (C.A. 4).

Indeed, respondent's insistence on the "prerogative" clause was admittedly calculated to, and did, render "invulnerable to attack" respondent's position that under no circumstances would it contract with the Union about the "prerogative" clause subjects (R. II. 32). If the Union had accepted the clause there would have been no bargaining on the subjects in question, because the contract itself would have foreclosed it. On the other hand, if the Union rejected the clause, there would certainly have been no bargaining on these subjects because, under respondent's pronouncement that there would in that event be no contract, further negotiations on any subject would have been futile. In short, no matter what position the Union took, respondent would not bargain about the prerogative clause subjects—subjects

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requires the employer, upon request, to offer to fix terms and conditions of employment for a reasonable period at some level, that presently existing, at least. An employer's refusal to do so—because he desires to retain a free hand to change such terms and conditions unilaterally at any time—is therefore clearly in violation of the duty to bargain. *National Labor Relations Board v. Express Publishing Co.*, 111 F. 2d 588, 589 (C. A. 5), reviewed only as to scope of order, 312 U. S. 426; *Globe Cotton Mills v. National Labor Relations Board*, 103 F. 2d 91, 94 (C. A. 5); *National*

concerning which it was under a statutory duty to bargain.

Respondent's insistence upon reserving to itself the right to act unilaterally with unfettered discretion in relation to the prerogative clause subjects was not qualified by its offer, contained in the proposed clause, to permit any employee aggrieved by management's unilateral action in this area to obtain review thereof through the grievance procedure provided for in the proposed contract (R. I. 97-98; R. II. 66-67). Since the clause itself precluded establishment of mutually agreed upon standards to govern the exercise of management's discretion, and since it also provided that "the decision of the company" on grievances "shall not be further reviewable by arbitration," it is clear that the offer accorded to the Union nothing more than an ineffectual opportunity to protest management's unilateral decision after the event. The incompatibility of such a scheme with the collective bargaining process envisioned by the Act was demon-

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*Labor Relations Board v. Knoxville Publishing Co.*, 124 F. 2d 875, 882-883 (C. A. 6); *National Labor Relations Board v. Swift & Co.*, 127 F. 2d 30, 31 (C. A. 6); *Singer Mfg. Co. v. National Labor Relations Board*, 119 F. 2d 131, 136 (C. A. 7), certiorari denied, 313 U. S. 595, rehearing denied, 314 U. S. 705; *National Labor Relations Board v. Montgomery Ward & Co.*, 133 F. 2d 676, 687 (C. A. 9). This rule was retained in the amended Act—Congress rejecting an amendment which would have relieved an employer of the duty to make a counterproposal. H.R. 3020, as passed, 80th Cong., 1st Sess., p. 9, 1 Leg. Hist. 166; S. Report No. 105 on S. 1126, p. 24, 1 Leg. Hist. 430.

strated in *Aluminum Ore Co. v. National Labor Relations Board*, 131 F. 2d 485, 486-487 (C. A. 7).

In that case, the employer, after extensive good faith bargaining with respect to most of the usual matters with which a collective agreement is concerned, took the position that "it would determine for itself what the wages and rates of pay should be." The employer then announced certain wage increases and stated that "these would stand until and unless there should be objection," in which event the employer "would permit any aggrieved person to present his complaint either personally or through the union" (131 F. 2d, at pp. 486-487).

The court held (*id.*, at p. 487) that the employer's insistence "upon following [a] plan . . . of not bargaining but of fixing increases ex parte, leaving to hearings of future grievances, determination of whether any adjustment was justified . . .

was not the collective bargaining required by the act [but was a procedure] upon the part of the employer effectuating removal of bargaining concerning the exact subject matter at issue. By the employer's act, the union was thereafter excluded from bargaining in determining what the increases should be." So here, respondent's prerogative clause effectuated a "removal of bargaining concerning" the subjects covered by the clause, and the Union "was thereafter excluded from bargaining" about those subjects. See also, *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d

766, 768 (C. A. 6), certiorari denied, 335 U. S. 814; *National Labor Relations Board v. Boss Mfg Co.*, 118 F. 2d 187, 189 (C. A. 7).

Having "foreclosed in advance any possibility of agreement"<sup>12</sup> by refusing out of hand the Union's requests to fix shift schedules, working rules, lunch periods, etc., by mutual agreement (R. II. 3-4, 53, 101-102; R. III, 47, 89-90, 96, 114-115), respondent clearly repudiated its statutory obligation to bargain collectively about those subjects. *Westinghouse* case, *supra*; *National Labor Relations Board v. Somerset Shoe Co.*, 111 F. 2d 681, 688 (C. A. 1); *National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 37 (C. A. 3); *National Labor Relations Board v. Highland Park Mfg. Co.*, 110 F. 2d 632, 637-638 (C. A. 4); *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 723 (C. A. 3).<sup>13</sup>

With the collapse of respondent's fundamental contention ~~that~~ the subjects in issue were "management prerogatives" the sole justification for respondent's repudiation of ~~its~~ bargaining obligation disappears. For it is beyond ques-

<sup>12</sup> *National Labor Relations Board v. Westinghouse Air Brake Co.*, 120 F. 2d 1004, 1006 (C. A. 3).

<sup>13</sup> The Union's repeated proposals that the issues which respondent insisted upon reserving for unilateral determination be fixed by mutual agreement in the contract, and its specific proposals of substantive terms of agreement with respect to shift schedules and lunch hours, for example, *supra*, pp. 7-8, refute respondent's suggestion that the Union's real objection was to respondent's refusal to agree to arbitration.

tion that an employer's refusal to bargain on a subject to which the collective bargaining obligation applies is not excused by his erroneous though sincere belief that the Act does not apply.<sup>14</sup> Respondent's position, in essence, was precisely the same as that of the employer in *Inland Steel Co. v. National Labor Relations Board*, 170 F. 2d 247 (C. A. 7), certiorari denied, 336 U. S. 960, who refused to bargain about employee pension and retirement matters because he did not believe that they were subjects of compulsory bargaining under the Act. In that case once the court concluded, as had the Board, that the employer was mistaken in believing that pension and retirement matters were outside the area of "wages . . . or other conditions of employment" (Section 9(a)), it followed, as both the Board and the court held, that the employer's refusal to bargain about those subjects violated Section 8 (a) (5) of the Act (170 F. 2d, at pp. 249-255).

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<sup>14</sup> *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332; *Medo Photo Supply Corp. v. National Labor Relations Board*, 321 U. S. 678; *W. W. Cross & Co., Inc. v. National Labor Relations Board*, 174 F. 2d 875 (C. A. 1); *National Labor Relations Board v. General Motors Corporation*, 179 F. 2d 221 (C. A. 2); *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d 766 (C. A. 6), certiorari denied, 335 U. S. 814; *Aluminum Ore Co. v. National Labor Relations Board*, 131 F. 2d 485, 486-487 (C. A. 7); *National Labor Relations Board v. Whittier Mills Co.*, 111 F. 2d 474, 478-479 (C. A. 5). Cf. *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 751 (C. A. 7), certiorari denied, 313 U. S. 565.

**II. Respondent, in Violation of Section 8 (a) (5) and (1) of the Act, Refused to Bargain Collectively Concerning Matters to Which the Collective Bargaining Obligation Admittedly Applied**

*A. By refusing to execute any contract unless the restrictive prerogative clause was included therein respondent imposed an unlawful qualification upon its offer to bargain about subjects not included in the prerogative clause*

Like its refusal to bargain at all on the subjects covered by the prerogative clause, respondent's insistence that it would execute a contract only on condition that it include the clause stemmed from respondent's conception that unilateral control of the subjects in issue was "management's prerogative." The validity of its "prerogative" concept was the only justification which respondent advanced for demanding the Union's concurrence therein. When respondent chose to make its "prerogatives" "invulnerable to attack" (R. II, 32), by refusing to execute any contract unless the Union accepted the prerogative clause it staked the legality of its entire response to the Union's bargaining request upon the soundness of its "prerogative" theory. For respondent thereby made it clear that it would perform its statutory duty to bargain about such terms and conditions of employment as were not affected by the prerogative clause, only if the Union would agree that it had no obligation to bargain about those subjects which were covered by the clause. Thus, respondent of

ferred only conditionally to bargain about subjects which admittedly fell within the bargaining requirement. Clearly, if the condition upon which it insisted was improper, respondent's offer failed to satisfy the statutory requirement. Rejection of respondent's prerogative theory reveals that the condition respondent demanded was not recognition of its legal rights but rather, condonation of its illegal conduct and the sacrifice of bargaining rights which the statute confers upon the Union. Under these circumstances, the impropriety of the condition seems beyond dispute; respondent's insistence upon it as the prerequisite for bargaining on subjects not covered by the clause, far from eliminating, or even obscuring the illegality of respondent's initial refusal to bargain about subjects which were covered, compounds its offense.

1. *By imposing a condition precedent to the execution of any contract respondent qualified its entire offer to bargain*

The terms of the Act make it plain that the duty to bargain comprehends the obligation to execute "a written contract incorporating any agreement reached if requested by either party," no less than the obligation "to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment" (Section 8 (d)). Indeed, it was settled even before the Act was amended to include the

above quoted provision, that the execution of contracts was the goal of the statutory scheme, that the written agreement was the "final step in the bargaining process,"<sup>15</sup> and that the duty to bargain therefore included the obligation to execute a written contract, once agreement as to substantive terms and conditions of employment was reached, because without such a permanent memorial the fruits of the bargaining itself would be lost.<sup>16</sup>

Since the duty to bargain includes the obligation to execute a contract covering the substantive terms and conditions agreed upon, it has uniformly been held that an employer who refuses to execute such a contract, except upon a condition on which he has no legal right to insist, thereby violates the Act. *National Labor Relations Board v. Dalton Telephone Co.*, 187 F. 2d 811 (C. A. 5), certiorari denied October 8, 1951, No. 145, this Term (employer's refusal to sign a contract unless the union registered under state law); *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C. A. 6) (employer's refusal to sign a contract until the union chartered a local organization); *National Labor Relations Board v. Todd Co., Inc.*, 173 F. 2d 705, 707 (C. A. 2), (employer's refusal to enter into any contract unless

<sup>15</sup> *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 525.

<sup>16</sup> *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 523-526; *Art Metals Construction Co. v. National Labor Relations Board*, 110 F. 2d 148, 150 (C. A. 2); *National Labor Relations Board v. Highland Park Mfg. Co.*, 110 F. 2d 632, 637-639 (C. A. 4).

union consented not to put agreement in writing); *McQuay-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748, 750-751 (C. A. 7) (employer's refusal to sign contract unless union accepted clause limiting recognition<sup>o</sup> to members only). And it is immaterial whether such refusal occurs before or after the substantive terms are agreed upon, for if it occurs after agreement, the refusal blocks consummation of the statute's ultimate objective, and if it occurs before, it frustrates the entire bargaining process by making agreement on substantive terms futile and vain. *Art Metals Construction Co. v. National Labor Relations Board*, 110 F. 2d 148, 150 (C. A. 2); *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291, 292 (C. A. 4); *National Labor Relations Board v. Highland Park Mfg. Co.*, 110 F. 2d 632, 639 (C. A. 4); *National Labor Relations Board v. Barrett Co.*, 135 F. 2d 959, 961 (C. A. 7); *National Labor Relations Board v. Blanton Co.*, 121 F. 2d 564, 569-570 (C. A. 8); *National Labor Relations Board v. Montgomery Ward & Co.*, 133 F. 2d 676, 686 (C. A. 9); *National Labor Relations Board v. Register Publishing Co.*, 141 F. 2d 156, 160 (C. A. 9).

Thus, respondent was no more entitled to insist that the Union accept the prerogative clause as a condition to obtaining a contract than it would have been entitled to insist that the Union accept it as a condition to continuing negotiations. In the one case as in the other, unless the Union acquiesced in the condition, respondent would not

perform its statutory obligation. Hence, unless respondent was entitled to qualify its offer of performance by a condition of its own creation, its insistence upon the Union's acceptance of the clause clearly violated the Act.

2. *By demanding an extra-statutory concession as a condition precedent to bargaining respondent repudiated its obligation to bargain*

Congress fixed, in the Act itself, the conditions which, when fulfilled, bring the bargaining obligation into play. It did not authorize the parties upon whom it imposed that obligation to limit or evade it by superimposing on the statutory conditions additional conditions of their own.

Section 8 (a) (5) declares that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)." Section 9 (a) provides that the representative selected by a majority of the employees in the unit involved "shall be the exclusive representative of all the employees" for the purpose of collective bargaining concerning the enumerated matters which constitute the subjects to which the bargaining obligation applies (see pp. 22-23, *supra*). Thus, to bring an employer's bargaining obligation into play a majority of the employees must select a bargaining agent. In addition, since there can be no "refusal" without a request, the agent so selected must request the employer to

bargain collectively with it. *National Labor Relations Board v. Columbia Enameling & Stamping Co.*, 306 U. S. 292, 297, 298. Subject to the single qualification that an employer who, in good faith, entertains a genuine doubt that the agent has actually been selected by a majority of the employees in an appropriate unit may properly request proof of its representative status and refuse to bargain until such proof has been submitted,<sup>17</sup> once these conditions have been fulfilled the bargaining obligation becomes absolute, and the employer may not lawfully refuse to perform any of the acts specified in Section 8 (d) as constituting collective bargaining.<sup>18</sup>

A contrary view, which would permit the employer to escape performance of his statutory duty

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<sup>17</sup> It has become a well-settled rule that "an employer need not bargain with a union if he entertains a genuine doubt that it represents a majority in an appropriate bargaining unit" (*The L. Hardy Company*, 44 NLRB 1013, 1024); that, if the employer acts in good faith, he may properly "request [majority] proof before continuing with the negotiations" (*Allied Yarns Corporation*, 26 NLRB 1440, 1451), or even insist upon a Board election before granting recognition to the union. *Sport Specialty Shoemakers, Inc.*, 77 NLRB 1011, 1012-1013; *Joy Silk Mills, Inc.*, 85 NLRB 1263, 1264, enforced as modified, 185 F. 2d 732 (C. A. D. C.), certiorari denied. 341 U. S. 914; *National Labor Relations Board, Thirteenth Annual Report* (Gov't. Print. Off., 1949), p. 60; *Fourteenth Annual Report* (Gov't. Print. Off., 1950), p. 71; *Fifteenth Annual Report* (Gov't. Print. Off., 1951), p. 119.

<sup>18</sup> It has been held that non-compliance with the requirements contained in Sections 9 (f), (g), and (h), dealing with the filing of non-Communist affidavits and financial reports, does not affect the employer's obligation to bargain, but goes to the power of the Board to remedy violations of the obligation. *West Texas Utilities Co. v. National Labor Relations Board*, 184 F. 2d 233 (C. A. D. C.), certiorari denied, 341 U. S. 939, rehearing denied, October 8, 1951.

unless the Union complied with extra-statutory requirements imposed by the employer himself, would substantially dissipate the bargaining obligation. If the employer could qualify his duty at will, and the employees' right were made dependent not upon their compliance with the uniform and objective criteria fixed by the statute, but upon their willingness to bow to the employer's whim, then truly the guarantee in Section 7 of the right to bargain collectively would be "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." Mr. Justice Jackson, concurring in *Edwards v. California*, 314 U. S. 160, 186. Such a view would leave the nature and number of conditions which the employer could lawfully exact entirely at large. As long as he acted in good faith, the employer could demand endless sacrifices, and yet escape condemnation of his frustration of the bargaining process as a violation of the Act. Such a result would hardly be compatible with the congressional objective of "encouraging the practice and procedure of collective bargaining" (Act, Section 1).

For these reasons, with the single exception of the decision of the court below in the instant case, the Board and every court which has considered the problem have held that an employer may not lawfully demand, as a condition precedent to performance of his own statutory duty, that the union perform an act which the statute does not require, or yield a right which the statute bestows. "Sec-

tion 7 of the Act guarantees to the employees the right to bargain collectively through a representative of their own choosing and it is not for the employer to restrain or interfere with the exercise of that right by insisting upon unwarranted conditions" (*National Labor Relations Board v. George P. Pilling & Son Co.*, 119 F. 2d 32, 38 (C. A. 3)).<sup>10</sup>

<sup>10</sup> Applying this principle the courts have held that an employer may not condition his willingness to bargain or sign a contract on the union's success in organizing employees of his competitors (*Pilling case, supra*); the union's disclosure of the names of its members (*National Labor Relations Board v. Cape County Milling Company*, 140 F. 2d 543, 545 (C. A. 8); *National Labor Relations Board v. Morris P. Kirk & Son, Inc.*, 151 F. 2d 490, 492 (C. A. 9)); the establishment of a local union (*National Labor Relations Board v. Aldora Mills*, 180 F. 2d 580 (C. A. 5), enforcing 79 NLRB 1, 2; *National Labor Relations Board v. Louisville Refining Co.*, 102 F. 2d 678, 680-681 (C. A. 6), certiorari denied, 308 U. S. 568); or the union's consent to an election when the employer's own unfair labor practices have intervened since the union's original showing of majority (*National Labor Relations Board v. Burke Machine Tool Company*, 133 F. 2d 618, 620 (C. A. 6)). In *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. 2d 291 (C. A. 4), where the employer made withdrawal of unfair labor practice charges which the union had filed with the Board "a condition precedent to further negotiations," and thereby trenched upon the union's right to file and prosecute unfair labor practice charges, the Board, holding that the employer had violated both Sections 8 (5) and 8 (1) of the Act, said (18 NLRB 268, 280):

The Act establishes a duty on the part of an employer to bargain with the representative of a majority of its employees concerning wages, hours, and other conditions of employment. The Act does not at the same time permit the employer to hedge about this duty by imposing unreasonable conditions precedent to bargaining collectively. A condition of the type here imposed, combining a restraint on the right to bargain collectively with an inducement to the labor organization to forego its redress for the employer's wrongful conduct . . . is particularly repugnant of the spirit of the Act.

*Eppinger & Russell*, 56 NLRB 1259, is precisely in point. In that case the employer refused to bargain with a union agent who had been properly designated by a majority of the employees unless and until the agent complied with the provisions of a Florida law which required union agents to obtain a state license before they could "operate" in the state. Rejecting the employer's contention that the existence of the state law warranted his action in conditioning bargaining upon the agent's procurement of a license, the Board held that the employer had thereby violated Section 8 (5) of the National Act. In *Hill v. Florida*, 325 U. S. 538, 542, this Court observed that the employer's insistence in *Eppinger & Russell* that the agent obtain a license as a condition precedent to bargaining "interfere[d] with the collective bargaining process" and that "The Board properly rejected the employer's contention \* \* \*."

In the *Hill* case, this Court held that although the states were not in specific terms subjected to the prohibitions imposed upon employers by the federal Act, they are not empowered to impose conditions upon the exercise of employee rights which the federal Act guarantees, for such conditions bring about "a situation inconsistent with the federally protected process of collective bargaining"

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Upholding the Board's finding the Court of Appeals commented (111 F. 2d, at p. 292): "it is clear that [the employer] could not thus make its compliance with the act dependent upon dismissal of charges that it had been guilty of violating it."

(325 U. S., at 543), and cause "a forfeiture of collective bargaining rights" (*id.*, at p. 539). *A fortiori*, private employers, to whom the statutory prohibitions directly apply, may not impose such conditions. If "Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments'" (*id.*, at p. 542), it could certainly not have intended to subject that freedom to the even more deadly erosion of conditions exacted by individual employers.

The principle is precisely the same when the condition or qualification imposed either by the state or by the employer affects the right to bargain about a particular term or condition of employment as when it affects any other right guaranteed by the national Act. Thus, in *Amalgamated Association, etc. v. Wisconsin Employment Relations Board*, 340 U. S. 383, 398-399, this Court held that Wisconsin could not by law declare that "the matter of assigning workers to certain shifts 'infringe[s] upon the right of the employer to manage his business,'" and thereby relieve the employer of the obligation imposed by the national Act to bargain about that matter. If, as this Court held, Wisconsin's attempt to reserve the matter of shift schedules to unilateral employer determination brought it into "direct conflict" with the national Act, an employer's attempt to accomplish the same result by making it a condition precedent to the

performance of his own statutory duty is also in "direct conflict" with the national Act.

There is thus no room for the distinction, which was evidently drawn by the court below, between the condition insisted upon by the employer in the *Dalton Telephone* case, 187 F. 2d 811, 812-813 (C. A. 5), certiorari denied October 8, 1951, No. 145, this Term, and the condition insisted upon by respondent in this case. In the *Dalton* case, the court below held that the employer had violated Section 8 (a) (5) of the Act "by imposing as a condition precedent to the execution of a contract, which had already been agreed upon in substance, the requirement that the union register under a Georgia statute so as to make it an entity amenable to suit in the state courts" (*id.*, at p. 812). The court said that the Company "by insisting that the union become an entity amenable to suit in the state courts, left the sphere of 'terms and conditions of employment', and conditioned his willingness to sign the agreement on a matter outside the area of compulsory bargaining" (*id.*, at p. 812). Apparently, the court below distinguished the instant case on the ground that the condition upon which respondent insisted was within "the sphere of 'terms and conditions of employment'" and was therefore a matter within "the area of compulsory bargaining." But such a distinction overlooks the fact that the right of a labor organization to bargain about particular terms and conditions of employment is not itself a "term or condition of em-

ployment," but a benefit conferred by law, and that for this reason that matter is also "outside the area of compulsory bargaining."

Where, as in this case, the employer fragmentizes the Union's bargaining rights, and conditions his willingness to recognize one portion of those rights on the Union's surrender of the remainder, the employer's interference with the exercise of bargaining rights conferred upon the Union is doubly clear, and his violation of Sections 8 (a) (1) and (5) is doubly offensive. It is the equivalent of demanding, as a condition of bargaining, that the Union waive its statutory right to recognition as the exclusive representative of all the employees in the appropriate unit, and agree instead to accept recognition as exclusive representative of its members only (*McQuady-Norris Mfg. Co. v. National Labor Relations Board*, 116 F. 2d 748 (C. A. 7), certiorari denied, 313 U. S. 565),<sup>20</sup> or of demanding, as a condition to bargaining about other terms and conditions of employment, that the Union forego its right to bargain for a closed shop or check off of union dues (i. e., under the original Act which permitted the closed shop). *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F.

<sup>20</sup> See also, *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344, 346-347 (C. A. 5); *Stewart Die Casting Corp. v. National Labor Relations Board*, 114 F. 2d 849, 853 (C. A. 7), certiorari denied, 312 U. S. 680; *National Labor Relations Board v. Griswold Mfg. Co.*, 106 F. 2d 713, 719 (C. A. 3); cf. *National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350-358.

2d 874, 883. (C. A. 1), certiorari denied, 313 U. S. 595; *National Labor Relations Board v. Winona Textile Mills, Inc.*, 160 F. 2d 201, 208-209 (C. A. 8).<sup>21</sup>

Such interference with rights guaranteed employees by the Act cannot be justified on the theory, which was apparently adopted by the court below (R. I. 114), that the employer has a right to insist that the union "bargain" about the exercise of those rights. Recognition of the union's right to bargain about every subject within the area of "terms and conditions of employment," like recognition of its right to act as bargaining agent for all employees in the unit, "is not a bargaining matter" (*McQuay-Norris* case, *supra*, 116 F. 2d, at p. 751), but an obligation imposed upon the employer by law. Consequently, the employer cannot make his willingness to extend such recognition "the subject of a long and extended bargaining process"; and an employer who does so is "in default of [his] statutory obligation" (*ibid.*). A contrary view, as the court observed in the *McQuay-Norris* case, *ibid.*, "would confer upon the employer the

<sup>21</sup> The *Reed & Prince* case, *supra*, is particularly pertinent in that there, as here, the employer's condition was that any contract ultimately executed must contain a clause providing for the union's surrender of the particular bargaining right in dispute (118 F. 2d, at p. 883). In the *Winona* case, *supra*, the court held that the employer's position, in which he "flatly refused to bargain on any major point until the closed shop demand was dropped," placed the union "at a great disadvantage at the conference table" and was untenable, because the employer "had a duty to bargain in good faith on the issue of a closed shop as well as on other issues." 160 F. 2d, at p. 208.

option of bargaining concerning a matter guaranteed the employees as of right \* \* \*."

Moreover, respondent was not "bargaining," in any sense, for a waiver of the union's right to negotiate and to participate in determining shift schedules and the other matters covered by the prerogative clause. What respondent offered the Union in exchange for surrender of its right to bargain about those matters was nothing more than performance of respondent's own statutory duty to bargain about other matters—something which, under no circumstances, did it have any right to withhold. Respondent left the Union with Hobson's choice—to take less than a full measure of the rights which Congress gave it, or no rights at all. To describe the employer's "steadfastness" in this position as "bargaining" (R. I. 114), is to confuse extortion with trade.

Certainly, respondent's additional demand that the Union acknowledge respondent's repudiation of its right to bargain about shift schedules and other matters by agreeing to incorporate the "prerogative" clause as a part of any collective bargaining contract did not transform respondent's illegal insistence upon the Union's surrender of that right into a lawful "bargaining" position. Cf. *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 883 (C. A. 1), certiorari denied, 313 U.S. 595, discussed in note 21, *supra*. Indeed, respondent's formulation of its position in contractual terms merely emphasized its insist-

ence upon treating "a matter guaranteed the employee as of right" as, at best, "a bargaining matter," *McQuay-Norris* case, *supra*.

Since respondent was not entitled initially to take the position that it would not bargain about shift schedules and other matters covered by the prerogative clause, or to buttress that position by refusing to bargain about all other matters unless the Union acknowledged its misconceived "prerogatives," respondent's position, as we shall now show, is not aided by the provision in Section 8 (d) of the Act that performance of the collective bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." For the same reason, as we demonstrate below, pp. 51-57, *infra*, the fact that the Union could lawfully waive its right to bargain about shift schedules, or other matters within the statutory collective bargaining sphere, provides no exculpation for the illegal means used by respondent to exact the waiver.

*B. Section 8 (d) does not relieve employers of the obligation to honor bargaining rights conferred upon labor organizations by the Act*

The distinction, overlooked by the court below, between substantive terms and conditions of employment, which are left to be determined through the collective bargaining process by the parties, and the right and duty to engage in collective bargaining about those terms and conditions of em-

ployment, which are fixed by the statute, was firmly established long before Congress, in amending the Act, added the definition of "collective bargaining" contained in Section 8 (d). For example, in *Art Metals Construction Co. v. National Labor Relations Board*, 110 F. 2d 148 (C. A. 2), the court repudiated the employer's contention that because the Act left him free to disagree with the representative of his employees as to what wages and hours should be, it likewise left him free to refuse to perform his statutory obligation to reduce any agreement reached to writing. Speaking through Judge Learned Hand, the court said, 110 F. 2d, at p. 150:

The freedom reserved to the employer is freedom to refuse concessions in working conditions to his employees, and to exact concessions from them; it is not the freedom, once they have in fact agreed upon these conditions, to compromise the value of the whole proceeding, and probably make it nugatory.

Accord: *National Labor Relations Board v. Highland Park Mfg. Co.*, 110 F. 2d 632, 639 (C. A. 4). Manifestly, this Court's statement in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, that the "Act does not compel agreements between employers and employees. \* \* \* The theory of the Act is that free opportunity for negotiation \* \* \* may bring about the adjustments and agreements," had reference only to "adjustments and agreements which the Act

in itself does not attempt to compel," not to the adjustment which Congress itself made in imposing upon employers the duty to recognize and bargain collectively with representatives selected by their employees.

Congress incorporated that distinction in Section 8 (d). The section restates the obligations comprehended by the duty to bargain collectively as including, *inter alia*, the obligation to negotiate "in good faith with respect to wages, hours, and other terms and conditions of employment" and to execute "a written contract incorporating any agreement reached if requested by either party." Clearly, the proviso's assurance that neither party is compelled "to agree to a proposal" or to make "a concession," was not intended to nullify the entire bargaining obligation by leaving compliance with the requirements of the Act optional with either party. It cannot be that Congress in one breath imposed the duty to bargain upon request about "wages, hours, and other terms and conditions of employment" and in the next breath provided that denial of the request should eliminate the duty.

As the Board observed (R. I. 87), the proviso, like the restatement to which it is attached, "substantially codifies the bargaining standards developed under the Wagner Act."<sup>22</sup> The proviso is

<sup>22</sup> See also, National Labor Relations Board, *Thirteenth Annual Report* (Gov't. Print. Off., 1949), p. 59; *Fifteenth Annual Report* (Gov't. Print. Off., 1951), p. 125.

directed to the concept of bargaining "in good faith," and emphasizes that while that obligation requires that parties "enter into discussion with an open and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor" (*Globe Cotton Mills v. National Labor Relations Board*, 103 F. 2d 91, 94 (C. A. 5)), and continue such discussion until an agreement or impasse on these matters is reached, it does not require that the parties make substantive concessions on the economic questions which are the subjects of their negotiations. *National Labor Relations Board v. Crompton-Highland Mills, Inc.*, 337 U. S. 217, 225; *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. 2d 134, 139-140 (C. A. 4), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Andrew Jergens Co.*, 175 F. 2d 130 (C.A. 9), certiorari denied, 338 U. S. 827; *Singer Mfg. Co. v. National Labor Relations Board*, 119 F. 2d 134, 137 (C. A. 7), certiorari denied, 313 U. S. 595.

The legislative history of Section 8(d) shows that incorporation of the proviso in the amended Act was impelled by dissatisfaction with what Congress believed was the Board's practice in some cases of regarding an employer's failure or refusal to make economic concessions in the course of negotiations as an indication of bad faith. The report on the House bill (H. R. 3020, as reported 80th

Cong., 1st Sess., pp. 6-10, in 1 Leg. Hist. 36-40),<sup>23</sup> supported the inclusion therein of an objective definition of collective bargaining on the ground that in "determining whether or not employers had bargained in good faith," the Board had set "itself up as the judge of what concessions an employer must make and of the proposals and counterproposals that he may or may not make" (H. Rep. No. 245, pp. 19-20 in 1 Leg. Hist. 310-311). The Report states (*id.*, at p. 20, in 1 Leg. Hist. 311) that "*in view of the Board's rulings on the duty to bargain the committee has deemed it wise to define collective bargaining to mean what the Supreme Court in the Jones & Laughlin case, supra, says it means.*" (italics in original). The Conference Report noted that "the Senate Amendment, while it did not prescribe a purely objective test of what constituted collective bargaining, as did the House bill, had to a very substantial extent the same effect as the House bill in this regard, since it rejected, as a factor in determining good faith, the test of making a concession and thus prevented the Board from determining the merits of the positions of the parties." (H. Conf. Rep. No. 510, p. 34 in 1 Leg. Hist. 538). The Report concluded that the "conference agreement, like the Senate amendment, does not contain a definition as such of 'collective bargaining,' but does, in section 8 (d) of the

<sup>23</sup> H. Rep. No. 245, 80th Cong., 1st Sess., in 1 Leg. Hist. 292. "Leg. Hist." refers to the two volume edition entitled Legislative History of the Labor Management Relations Act, 1947 (Gov't. Print. Off., 1948).

amended Labor Act, contain provisions similar to those of the Senate amendment . . ." (*id.*, at p. 35, in 1 Leg. Hist. 539).

Since the right to refuse to agree to a proposal or to make a concession relates only to substantive issues involving terms and conditions of employment, and is pertinent only to the question whether a party who has engaged in negotiations looking to the resolution of such issues by mutual agreement has bargained "in good faith," the proviso is manifestly irrelevant to a case such as this where the employer refused totally to negotiate concerning the establishment of certain substantive terms and conditions of employment by mutual agreement, and offered only conditionally to bargain about others, and where his repudiation of the bargaining obligation was found by the Board "*per se*" to violate the Act, without regard to any question of "good faith."

C. *That a party may lawfully waive collective bargaining rights conferred by the Act does not excuse the commission of unfair labor practices designed to induce such a waiver*

It goes almost without saying that the mere fact that the "prerogative" clause upon which respondent insisted could have been incorporated in the collective bargaining contract by lawful means provides no exculpation for respondent's use of unfair labor practices to induce its acceptance by the Union. The Board and the courts have recognized

that a duly designated bargaining agent does not lack capacity to waive various rights conferred by the Act,<sup>24</sup> and, where such a waiver has not resulted from the commission of unfair labor practices, the waiver has been upheld. The right to bargain about one or more subjects in the area of "terms and conditions of employment" is one of the rights within the capacity of a union to waive; the waiver may take the form of a temporary cession to the employer of power to deal unilaterally with the subjects in issue, or an agreement reserving such power to the employer for a definite time. "Collective bargains need not and do not always settle or embrace every exception. It may be agreed [between the bargaining parties] that particular situations are reserved for individual contracting, either completely or within prescribed limits."

<sup>24</sup>See, e.g., *Bethlehem Steel Company, Shipbuilding Division, et al.*, 89 NLRB 341, 345-346, enforcement denied on other grounds, 191 F. 2d 340 (C.A. D.C.) (union's right under Section 9 (a) to attend the adjustment of grievances by foremen); *May Department Stores Co.*, 59 NLRB 976, 981, n. 17, enforced, 154 F. 2d 533, 536 (C. A. 8), certiorari denied, 329 U. S. 725 (right to solicit memberships); *Briggs Indiana Corp.*, 63 NLRB 1270, 1272-1273 (right to represent certain units of employees); *General Controls Co.*, 88 NLRB 1341, 1342 (right to bargain about individual merit wage increases); *Globe Automatic Sprinkler Co.*, 95 NLRB, No. 42 (union's right to select negotiators who are not employees of the employer). Cf. *Alabama Marble Co.*, 83 NLRB 1047, 1049 (union's right to bargain with respect to certain hours and wages); *Old Line Life Insurance Co.*, 96 NLRB No. 66, decided September 27, 1951, 28 LRRM 1539, 1541 (union's right to bargain with respect to promotions). The Board not only requires that the waiver be entirely voluntary, but that there be a "clear and unmistakable showing of a waiver of such rights" *Tide Water Associated Oil Co.*, 85 NLRB 1096, 1098; The Board's Fifteenth Annual Report (Gov't. Print. Off. 1951), p. 121.

*Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U. S. 342, 347.

But unless a premium is to be placed upon the commission of unfair labor practices, a "waiver" which results from an employer's refusal to recognize the Union's right to bargain about the issues in dispute, or his refusal to bargain on other issues in the absence of a waiver, cannot be deemed either voluntary or valid. In point here is *Richfield Oil Corp. v. National Labor Relations Board*, 143 F. 2d 860 (C. A. 9). There the court held that merchant sailors were entitled to have the assistance of their union "shore delegates" in settling grievances with the employer, and that the delegates' access to ships in port was a "necessary incident of the sailors' right of collective bargaining." During a period while negotiations for a new contract were under way the employer had refused to issue the customary ship passes to the delegates and defended his action "on the ground that [the sailors' right to have the delegates aboard] is one which they may bargain away and therefore one which the employer may withhold from the sailors during the period of their collective bargaining for a new contract . . . ." Rejecting this defense, the court said "Assuming, but not deciding, that the sailors may bargain away the right of access of their shore delegates, in the absence of such an agreement the right exists and is enforceable. The owner cannot deny its exercise for the purpose of making a better bargain as to some other provision

of the contract" (143 F. 2d, at pp. 861-862). In many of the cases discussed in subsection "A" above, pp. 34-35, 38-45, *supra*, the waiver upon which the employer insisted was one which the Union was empowered to grant. In this sense, the waiver was something "about which the parties may bargain or negotiate, but which cannot be insisted upon as a condition precedent to the making of a contract." *National Labor Relations Board v. Dalton Telephone Co.*, 187 F. 2d 811, 812 (C. A. 5), certiorari denied, October 8, 1951, No. 445, this Term.

Thus, an employer can no more lawfully refuse to submit any issue in the area of terms and conditions of employment to the bargaining process in order to secure a waiver of the Union's right to bargain about that subject than he can lawfully bargain with individuals or take unilateral action concerning it, or refuse to bargain altogether to achieve the same end. *Order of Railroad Telegraphers* case, *supra*; *National Labor Relations Board v. J. H. Allison & Co.*, 165 F. 2d 766, 768 (C. A. 6), certiorari denied, 335 U. S. 814; *National Labor Relations Board v. Todd Co., Inc.*, 173 F. 2d 705, 707 (C. A. 2); *Hughes Tool Co. v. National Labor Relations Board*, 147 F. 2d 69, 73 (C. A. 5); *National Labor Relations Board v. Corsicana Cotton Mills*, 178 F. 2d 344, 347 (C. A. 5). The same reasons which prevent an employer from relying upon conditions which could otherwise redound to his advantage, where the conditions have resulted

from his commission of unfair labor practices—*e.g.*, a union's loss of majority status (*Franks Bros. Co. v. National Labor Relations Board*, 321 U. S. 702; or a strike which affords opportunity to secure permanent replacements (*National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333)—prevent according validity to a waiver induced by such unfair labor practices.

It follows, that while an employer may lawfully in the course of negotiations propose that the union waive a portion of its bargaining rights,<sup>25</sup> and offer economic concessions which he is free under the Act to withhold as an inducement to obtain the Union's assent, he may not lawfully even compel discussion, much less compel assent to such a proposal, either by refusing to recognize the Union's right to bargain about the issues in dispute, or by conditioning the continuation of negotiations or the execution of a contract upon it.<sup>26</sup> In other words, it is the

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<sup>25</sup> See, *e.g.*, *Alabama Marble Co.*, 83 NLRB 1047, 1049-1050 (hours and wages); *Old Line Life Insurance Co.*, 96 NLRB, No. 66, 28 LRRM 1539, 1541 (promotions); *Standard Generator Service Company of Missouri, Inc.*, 90 NLRB 790, 791 (revision of wage rates).

<sup>26</sup> Cox and Dunlop, *op. cit. supra*, note 7, notwithstanding the Board's holdings which sustain the validity of voluntary waivers of the right to bargain about various terms and conditions of employment, suggest that to preserve the possibility of such agreements the Board should construe the Act as requiring only that the employer negotiate in good faith on major issues of wages and hours, thereby leaving the employer free—as a matter of law—to refuse to bargain about such terms and conditions of employment as pensions, shift schedules, etc. Apart from the fact that the terms of Section 9 (a) and 8 (d) leave no room for such splitting of the content of the bargaining obligation, the approach which these authors suggest would abandon to economic warfare issues which Congress removed from that area by substituting the

Union which has the option of bargaining about waiver of its right to a voice in the determination of matters within the compulsory bargaining sphere, just as it is the employer who has the option of bargaining about waiver of his right unilaterally to determine matters outside that sphere.<sup>27</sup> Therefore, when a union rejects the employer's suggestion or inducement to waive bargaining on a particular subject to which the bargaining obligation applies, the employer must bargain. Otherwise he is in the same position as if he had refused to bargain about the subject

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rule of law. The fact that the construction of the Act adopted by the Board and the courts leaves ample room for the result which the authors deem so desirable demonstrates that no such distortion of the Act as they suggest is necessary to accomplish it. See Findling and Colby, *op. cit. supra*, n. 7.

<sup>27</sup> Thus, although a union may not require an employer to bargain concerning the conditions under which replacements for economic strikers are to be hired (*Times Publishing Company*, 72 NLRB 676, 684), or concerning the reinstatement of employees on strike in violation of a no-strike clause in the union's contract (*Charles E. Reed & Co.*, 76 NLRB 548, 549-550; National Labor Relations Board *Thirteenth Annual Report* (Gov't. Print. Off., 1949), p. 61), the employer may agree to bargain about matters such as these. The Committee Report on the House bill (H. Rep. No. 245, on H. R. 3020, 80th Cong., 1st Sess., pp. 22-23, in 1 Leg. Hist. 292, 313-314), in discussing the "scope of bargaining," recognized the limitations upon the subject matter of compulsory bargaining: "Just as the employer has no right to bargain about who the union's officers and representatives will be, what dues and assessments it shall impose, how it shall spend its money or otherwise conduct its internal affairs so long as they do not affect the employer's operations, so the union has no right to bargain with the employer about who his agents will be, what prices he will charge, what his profits shall be, or how he shall manage his business, so long as he does not violate the union's contract with him or ignore his obligations under the Labor Act."

in question at the outset of negotiations, without suggesting a waiver by the Union.<sup>28</sup>

Effectuation of the policies of the Act requires this result. The theory of the Act is that industrial peace will be promoted if all the issues to which the bargaining obligation applies are resolved by mutual agreement between the employer and the bargaining agent of the employees. On this theory, an employer's refusal to submit such issues to the bargaining process is clearly productive of dissatisfaction and strife. *Order of Railroad Telegraphers*, case, *supra*. The objectives of the Act are satisfied only where the issues are resolved by mutual agreement or are left to individual bargaining by voluntary agreement of the parties.


#### CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed, insofar as it holds that respondent did not violate Section 8 (a) (5) and (1) of the

<sup>28</sup> The Board's holding in *Shell Oil Company*, 77 NLRB 1306, that an employer who had reached agreement with the union on all substantive terms of a contract did not unlawfully refuse to bargain by insisting on the inclusion of a no-strike clause therein is not inconsistent with the pattern of holdings described above. As the Board explained in *Bethlehem Steel Company, Shipbuilding Division, et al.*, 89 NLRB 341, 345, n. 9: "Since the statutory purpose to substitute the practice and procedure of collective bargaining for industrial strife was achieved by the parties' agreement on all the substantive terms and conditions of employment, it was by the same token consonant with this salutary objective for the companies to demand, as part of the bargain, that the union refrain from striking and respecting picket lines for the duration of the contract."

Act when it conditioned the execution of any contract with the Union upon the inclusion of the restrictive prerogative clause therein, and insofar as it denied enforcement of paragraph 1 (a) of the Board's order.

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JANUARY, 1952.

## APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. IV, 151, *et seq.*), are as follows:

\* \* \* \*

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

SEC. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

\* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

\* \* \* \*

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the

representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession \* \* \*

\* \* \* \* \*

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

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No. 126

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1951

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*  
v.  
AMERICAN NATIONAL INSURANCE COMPANY, *Respondent*

Reply of American National Insurance Company,  
Respondent, to Petition of National Labor Relations Board for a Writ of Certiorari to the  
United States Court of Appeals for the  
Fifth Circuit

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## INDEX

	PAGE
QUESTION PRESENTED . . . . .	2
STATEMENT . . . . .	2
REASONS WHY PETITION SHOULD BE REFUSED . . . . .	6
APPENDIX A . . . . .	15
APPENDIX B . . . . .	21

## CITATIONS

### CASES

Electric Railway and Motor Coach Employees, etc., v. Wisconsin Employment Relations Board, 340 U.S. 383 . . . . .	11
Hartsell Mills Co. v. National Labor Relations Board, 111 F. 2d 291 . . . . .	12
McQuay-Norris Mfg. Co. v. National Labor Relations Board, 116 F. 2d 748 . . . . .	12
National Labor Relations Board v. Pittsburg Steamship Company, 340 U.S. —, 71 S. Ct. 456 . . . . .	10, 11
National Labor Relations Board v. Reed & Prince Mfg. Co., 118 F. 2d 874 . . . . .	12
Richfield Oil Corp. v. National Labor Relations Board, 143 F. 2d 860 . . . . .	12
Universal Camera Corporation v. National Labor Relations Board, 340 U.S. —, 71 S. Ct. 456 . . . . .	9, 10

IN THE  
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**Reply of American National Insurance Company,  
Respondent, to Petition of National Labor Rela-  
tions Board for a Writ of Certiorari to the  
United States Court of Appeals for the  
Fifth Circuit**

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The National Labor Relations Board seeks by its Petition for a Writ of Certiorari review of a judgment of the Court of Appeals for the Fifth Circuit, entered pursuant to and in accordance with its Opinion handed down February 23, 1951. Inasmuch as such Opinion has not been made part of the Board's Petition for the stated reason that same is not yet reported, we, for the convenience and ready reference of this Court, print such Opinion as Appendix A to this Reply Brief.

## Question Presented

We think the statement of the "Question Presented" as set forth in the Petition is both inaccurate and inept. It seems to us that the questions presented are: ONE, whether or not Clause III of the existing contract between Respondent and Office Employees International Union, A.F. of L., Local No. 27 (hereafter called Union), is in and of itself unlawful; and Two, whether or not Respondent has violated the Labor Management Relations Act by the manner in which it sought the inclusion of such clause in such contract. Believing that a fuller understanding of such questions requires that such Section III be read in context with the entire contract of which it is part, we also print for the convenience and ready reference of this Court such contract as Appendix B to this Reply Brief.

## Statement

Briefly, the facts leading up to the Decision and Order of the Board, review of which was sought and had by Respondent in the Court of Appeals below, are:

On the 13th day of January, 1950, Respondent, having completed its negotiations in respect thereto with the Union, entered into and signed with the Union a contract (Appendix B) covering all phases of rates of pay, wages, hours of employment, and other conditions of employment of the employees of Respondent's home office in the City of Galveston, Texas, within the bargaining unit represented by such Union, as to which any negotiation had been sought. Such contract, by its terms, remained in effect until July 12, 1951; and provides that it shall thereafter be automatically renewed for additional periods of one year each, unless either party thereto shall give written notice of its desire to negotiate changes therein.

Almost at the outset of negotiations for such contract between Respondent and the Union, on the 28th day of January, 1949, an unfair labor practice charge was filed against Respondent by the Union. Pursuant to the filing of such Charge, complaint and notice of hearing thereon was issued by the Board's Fort Worth Regional Office on June 30, 1949, and such hearing was had before a Trial Examiner beginning July 26, 1949. Amongst other things with which Respondent was charged in such complaint was that its insistence on the inclusion of Clause III, or the substance thereof, in its contract with the Union constituted a refusal to bargain collectively in good faith as required by the Act. Negotiations between Respondent and the Union nevertheless continued without serious interruptions during all of the intervening time between the original filing of the complaint and the hearing before the Trial Examiner.

In his Intermediate Report the Trial Examiner specifically exonerated Respondent from any refusal to bargain collectively in good faith as required by the Act by reason of insistence of inclusion of Paragraph III in its contract with the Union in the language quoted with specific approval by the Court of Appeals below as Footnote III to its opinion. After the filing by the Trial Examiner of his Intermediate Report, contract negotiations were resumed between Respondent and the Union, and culminated in the execution of a contract between them (Appendix B). In the meantime, Respondent, the Board, and the Union through its attorneys, Woll, Glenn & Thatcher, all filed Exceptions to the Intermediate Report. It is noteworthy that the Union's attorneys did not except to the Intermediate Report insofar as it absolved Respondent of refusal to bargain collectively in good faith as required by the Act. The fact that a contract between Respondent and the Union had been negotiated and executed was made known to the Board, and a copy of such contract furnished to it prior to

the time it rendered its Decision and Order.

The net holding of the Board's Decision and Order was two-fold—FIRST, that Clause III of the contract was in and of itself unlawful, and SECOND, that Respondent, by the very act of insisting upon the inclusion of such clause in its contract with the Union had committed a per se violation of the Act. It was with such Findings and Conclusions of the Board alone that Respondent took issue in its Petition for Review filed in the Court of Appeals below. Such Court below, specifically agreeing with the Trial Examiner and disagreeing with the Board, sustained Respondent's contentions, and held "That the provisions of the contract assailed by the Board are not illegal or in anywise forbidden or prohibited; that petitioner had a right to urge and insist upon them; and that the evidence, viewed as a whole, does not \* \* \* show any refusal of the petitioner to engage in collective bargaining, as that term is defined in the act and in the decisions of the courts."

As to whether or not Respondent had in fact (as distinguished from "in law") refused to bargain collectively in good faith as required by the Act by assuming and maintaining an adamant and inflexible position which blocked agreement between it and the Union and consummation of a contract pursuant to agreement, as the Board had found, the Court of Appeals below specifically found:

"Because, however, of these unilateral acts, done while the bargaining was going on, and not because of any support in the evidence for the view that the employer, in insisting on the inclusion of the prerogative clause, was any less in good faith than the union was in resisting its inclusion, the affirmative clause 2(a) requiring the employer to bargain will be enforced.

"While, as the event showed, the union and peti-

tioners were able to at last agree on a prerogative clause in somewhat modified terms, the union continued throughout to be as vigorously opposed to any clause of that kind as the employer was in favor of it. It was not, therefore, as the board finds, the steadfastness of the employer alone, in insisting on his point. It was the steadfastness of employer and union, the one in proposing, the other in opposing, a clause of this kind, which the employer felt it ought, and the union felt it ought not, to have, which prolonged the negotiations. It was not any general unwillingness on the part of the petitioner to negotiate a contract satisfactory to itself as well as the union."

Such opinion also states:

"Of the opinion that in the quotation from the examiner's report, set out in Note 3 above,<sup>1</sup> the law is

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<sup>1</sup> "There is no doubt that respondent here had a right to insist upon the inclusion of the 'prerogative clause' in any contract. I find, contrary to the contention of the General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment more favorable than those then existing. Assuming, but of course, not deciding, that respondent's employees were ill-paid, and that respondent could well afford to grant a wage increase, it was under no legal compulsion to do so. True, the Act recognizes (Section 1) that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce, but in ameliorating this condition the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table.

"It is argued further, however, that the intransigence of respondent is, in itself, evidence of bad faith—that respondent by its refusal to grant more than minor or meaningless concessions had demonstrated that it did not approach the bargaining table with an open mind—that its conduct has not been that of one seeking agreement. But 'open mind' need not mean a mind without conviction nor need it mean a mind easily swayed by argument."

correctly stated, and that, in insisting on the prerogative clause, the company was not guilty of refusing to bargain, we order enforcement as to Paragraphs 1(b) and 2(a) and deny it as to Paragraph 1(a)."

It is with the foregoing quoted section of the Opinion of the Court of Appeals below that the Board takes issue and of which it seeks review and reversal.

### *Reasons Why Petition Should be Refused*

It seems unquestioned that if Paragraph III of the contract is not, in and of itself, unlawful, Petitioner can only be guilty of refusal to bargain collectively in good faith because of the manner in which it sought by negotiation the inclusion of such clause in its contract with the Union. We submit that the question of whether or not such clause is in and of itself unlawful is, of course, one of law, and conversely, that the question as to whether or not Respondent has violated the law because of the manner in which it sought by negotiation to have such clause included in its contract is obviously one of fact.

While we have been unable to determine with any degree of certainty from the Brief filed by the Board with the Court of Appeals below, or from the Board's Petition for Rehearing, or from the Board's Petition for a Writ of Certiorari filed in this Court, whether the Board actually questions the legality of Clause III as such, or merely challenges the manner in which its inclusion in the contract was sought by Respondent, we do believe that the Board does not seriously challenge the legality of the clause as such. In support of such belief, we offer the following quotations from such Brief and Petitions filed by the Board:

"The Board's view does not imply, of course, that a labor organization may not lawfully agree for the

duration of a contract to waive its right to bargain concerning particular subjects in the area of wages, hours, and working conditions. Nor does it mean that an employer may not lawfully request the Union to agree to such a provision. \* \* \* (Page 16, Petition for Writ of Certiorari.)

"Finally, petitioner claims that the Board's order herein invalidates its current contract with the Union, without specifying the 'particular offensive provision,' and thus leaves petitioner in a dilemma as to the negotiation of future contracts. The alleged dilemma, we submit, is altogether fictitious. Nothing in either the Board's decision or its order invalidates petitioner's current contract with the Union or any provision in it. Petitioner's conduct, which the Board found unlawful, related to the means adopted by petitioner to restrict the Union's bargaining rights during the contract negotiations, rather than the inclusion in a contract of a provision which was in itself unlawful.

"The Board's order is plainly directed, not against a restrictive prerogative clause as such, but against repetition of petitioner's 'insisting as a condition of agreement, that the said Union agree to (such) a provision. \* \* \* Nothing in the decision or order restricts the right of petitioner and the Union, *through good faith bargaining*, to reach an agreement that such a provision should be included in a future contract.

"Such an agreement by the Union would mean simply that the Union had waived, for the specified period of the contract, its statutory right to bargain about the bilateral establishment of the conditions of employment covered by the prerogative clause." (Brief of the Board before the Court below, bottom of page 31, et seq.).

"Although it is recognized that the Union could have voluntarily agreed to surrender its right to bargain on these matters, the Board concluded that the

company's conditioning of any contract at all on the Union's surrender of its statutory right to bargain about these particular subjects constituted bad faith bargaining, and also that it constituted, quite apart from the element of bad faith, a per se violation of Section 8(a) (1) and (5) of the Act." (Petition of the Board for Rehearing filed in the Court of Appeals below, page 2.)

Actually, of course, there is nothing, "illegal or in any-wise forbidden or prohibited" as the Court of Appeals below found in the clause as such, and counsel for the Board has consistently so admitted.

This then leaves a question of fact only as to whether or not, on the record viewed as a whole, Respondent violated the Act in the manner in which it sought in its negotiations with the Union to have such clause included in the contract. That this fact question is and remains the sole question for determination we believe clearly appears from a reading of the Board's Petition for Writ of Certiorari filed herein. Further support for such belief, we believe, is furnished by the following quotations from the Board's Brief in the Court of Appeals below:

"In short, petitioner would reduce the case to the simple question of whether there was good faith bargaining as to the inclusion of an arbitration provision in the prerogative clause. Petitioner argues that an impasse was reached on the matter and then goes to some lengths to show that, under the Act, it may not be compelled to agree to subject its determinations to review by arbitration. Needless to say, we fully agree with the latter proposition." (Board's Brief before the Court of Appeals below, page 15.)

"And if, in the instant case, petitioner had negotiated with the Union in good faith with respect to

the matters mentioned above, and had found that, despite full consideration of their respective positions, the parties could not reach agreement upon any or all of the matters, then the parties would have reached a legitimate impasse, and petitioner's obligation to bargain with respect to those particular terms and conditions of employment would have been satisfied." (Board's Brief before the Court of Appeals below, page 34.)

The fact question presented as stated as above has been decided adversely to the Board and favorably to the Respondent on review of the record as a whole by the Court of Appeals below, which specifically found that there is no support in the evidence for the view "that the employer in insisting on the inclusion of the prerogative clause, was any less in good faith than the Union was in resisting its inclusion. \* \* \* " This the Board has already conceded in its Petition for Rehearing in the Court below, as evidenced by the following from such petition.

"This Court appears to have regarded the company's clause itself as if it were an ordinary subject of collective bargaining such as wages, hours, and other conditions of employment. Accordingly, the Court concluded that it was just as fair and reasonable, under the Act, for the company to insist upon including the clause in any contract as it was for the Union to refuse to do so. In effect, the Court considered that the parties reached a legitimate impasse on the issue." (Board's Petition for Rehearing, page 2.)

Under the specific holding of this Court, in *UNIVERSAL CAMERA CORPORATION V. NATIONAL LABOR RELATIONS BOARD*, 340 U.S.—, 71 S. Ct. 456, and *NATIONAL LABOR RELATIONS BOARD V. PITTSBURG STEAMSHIP COMPANY*, 340

U.S.—, 71 S. Ct. 453, both decided February 26, 1951, as well as in conformity with the specific direction contained in such opinions to the Courts of Appeals below, we believe that such review of the Record, viewed as a whole, was authorized by, and indeed required of, the Court of Appeals below herein. We further believe that such opinions of this Court preclude its review of the fact findings of the Court of Appeals below as sought by the Board in its Petition for Certiorari.

We quote from *UNIVERSAL CAMERA CORPORATION v. NATIONAL LABOR RELATIONS BOARD*, *supra*:

"We should fail in our duty to effectuate the will of Congress if we denied recognition to expressed Congressional disapproval of the finality accorded to Labor Board findings, by some decisions of this and lower courts, or even of the atmosphere which may have favored those decisions.

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony

of witnesses or its informed judgment on matters within its special competence or both.

" \* \* \*

"Our power to review the correctness of application of the present standard ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied."

We also quote from NATIONAL LABOR RELATIONS BOARD v. PITTSBURG STEAMSHIP COMPANY, *supra*:

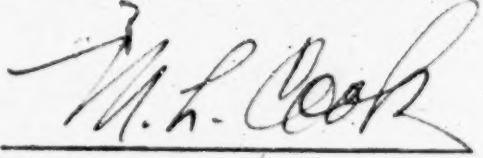
"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situations we should adhere to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.'"

The Board, in its Petition for Certiorari, as it did in its Motion for Rehearing, filed in the Court of Appeals below, cites the case of ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, ETC., v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 340 U.S. 383. The specific question in that case was whether or not a Wisconsin statute requiring compulsory

arbitration of labor disputes involving public utilities could stand as against the Labor Management Relations Act which neither requires nor permits the requiring of compulsory arbitration. This Court, in determination of such question, found that "In the exercise of its judicial function (it) must take the comprehensive and valid federal legislation as enacted and declare invalid State legislation which impinges on that legislation," and, "having found that the Wisconsin public utility anti-strike law conflicts with that federal legislation, the judgments enforcing the Wisconsin Act can not stand." Such authority, rather than furnishing any support to the Board's position contained in its petition for Writ of Certiorari, on the other hand seems to us to lend considerable support to Respondent's position as maintained in the Court of Appeals below. In fact, had such authority been on the books at the time of the submission of this case below, we would have certainly relied strongly upon it. If the State of Wisconsin can not by statute require arbitration of disputes between employer and employee, how then can the Union in this isolated, individual transaction require arbitration?

Upon examination, it appears that the decisions of the Courts of Appeals for the First, Fourth, Seventh and Ninth Circuit, being NATIONAL LABOR RELATIONS BOARD V. REED & PRINCE MFG. CO., 118 F. 2d 874, certiorari denied, 313 U.S. 595; HARTSELL MILLS CO. V. NATIONAL LABOR RELATIONS BOARD, 111 F. 2d 291; McQUAY-NORRIS MFG. CO. V. NATIONAL LABOR RELATIONS BOARD, 116 F. 2d 748, certiorari denied, 313 U.S. 565; and RICHFIELD OIL CORP. V. NATIONAL LABOR RELATIONS BOARD, 143 F. 2d 860, cited by the Board in its Petition as conflicting "in principle" with the decision of the Court of Appeals for the Fifth Circuit here involved, simply do not so conflict in principle, or otherwise.

It is respectfully submitted that the Petition of the National Labor Relations Board for Certiorari should be denied.



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Supreme Court of the United States,

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**INSURANCE COMPANY**

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**APPENDIX A**  
**IN THE**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

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No. 13,198

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AMERICAN NATIONAL INSURANCE COMPANY, *Petitioner*,  
VERSUS  
NATIONAL LABOR RELATIONS BOARD, *Respondent*

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Petition for Review of an Order of the National Labor  
Relations Board, Sitting at Washington, D. C.

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(February 23, 1951)

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Before HUTCHESON, Chief Judge, and McCORD and BORAH,  
Circuit Judges.

HUTCHESON, Chief Judge: Proceeded against by the board,  
found guilty of violations<sup>1</sup> of the National Labor Relations  
Act, as amended, and ordered: (1) to cease and desist from

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<sup>1</sup> Specifically (a) of refusing to bargain collectively by insisting upon the so-called prerogative clause of the contract; and (b) of interfering with its employees in their right of self-organization by discouraging membership in a union, and bargaining collectively through a representative of their own choosing.

(a) refusing to bargain with the union by in effect insisting on the prerogative clause; and (b) from illegal interferences with its employees; and (2) upon request to bargain collectively with the union; respondent below has brought the matter to this court by petition for review, in which it seeks not to set aside the order as a whole but to modify or set it aside in part to the extent that its enforcement would outlaw, or prevent petitioner from stipulating for, the prerogative clause of the contract.

Alleging: that, on the 13th of January, 1950, after the examiner had filed his report on October 1, 1949, and before the board had, on April 5, 1950, filed its report, petitioner and the union, after completion of their bargaining negotiations, had entered into a written contract which is, and will, until July, 1951, be, in force; that in insisting upon the so-called prerogative clause with its provision against arbitration, it has not been guilty of unfair labor practices; that the net effect of the board's order is to deprive it, without due process of law, of rights guaranteed to it by law, including the right to refuse to agree to arbitration, by in effect requiring it, in any further contract negotiations, to abandon its prerogative clause and to agree to arbitration, petitioner prayed for such relief as the court might find it entitled to.

The board, in addition to answering, sought enforcement of its order, and the case is here for our appropriate action.

Neither in its petition nor in its brief does petitioner assail, or ask relief from, Paragraph 1(b) of the board's order. Its whole complaint is directed, its whole effort at relief is confined, to setting aside, as unfounded in law, Paragraph 1(a) of the order and the board's finding and conclusion that petitioner had, and has, no right to insist upon

the prerogative clause<sup>2</sup> of the contract, on the ground that on the record viewed as a whole the board's finding and conclusion on which this order rests is not supported by substantial evidence, and is not a lawful order, and that it may not be enforced but must be set aside and vacated.

It insists: that the purpose and effect of this paragraph of the board's order is to discredit and cast doubt upon the contract petitioner now has with the union; and that, if this court orders its enforcement, the net and inescapable effect will be to prevent petitioner from seeking in the renewal of its contract with the union to retain the same, or similar provisions as to company prerogatives and arbitration as that on which the union and the company have already agreed.

It urges upon us, therefore: that the examiner was right in concluding that petitioner had a right to insist upon the

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<sup>2</sup> "Functions and Prerogatives of Management. Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

"The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union, in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration."

inclusion of the clause in the contract;<sup>3</sup> that the board was wrong in its contrary conclusion that the respondent, by insisting on the so-called prerogative clause as a condition of agreement, failed to perform its statutory obligation to bargain; and that the enforcement of this Paragraph 1 (a) should be denied as unfounded in law and in fact.

We agree with the petitioner: that the provisions of the contract assailed by the board are not illegal or in anywise forbidden or prohibited; that petitioner had a right to urge and insist upon them; and that the evidence viewed as a whole, does not, except as manifested by the unilateral action of petitioner during the time when negotiations were going on, in making changes and raising wages without consulting or notifying the union, show any refusal of the petitioner to engage in collective bargaining, as that term is defined in the act and in the decisions of the courts.

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<sup>3</sup> "There is no doubt that respondent here had a right to insist upon the inclusion of the 'prerogative clause' in any contract. I find, contrary to the contention of the General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment more favorable than those then existing. Assuming, but of course not deciding, that respondent's employees were ill-paid and that respondent could well afford to grant a wage increase, it was under no legal compulsion to do so. True, the Act recognizes (Section 1) that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce but in ameliorating this condition the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table.

It is argued further, however, that the intransigence of respondent is, in itself, evidence of bad faith—that respondent by its refusal to grant more than minor or meaningless concessions had demonstrated that it did not approach the bargaining table with an open mind—that its conduct has not been that of one seeking agreement. But 'open mind' need not mean a mind without conviction nor need it mean a mind easily swayed by argument."

Because, however, of these unilateral acts, done while the bargaining was going on, and not because of any support in the evidence for the view that the employer, in insisting on the inclusion of the prerogative clause, was any less in good faith than the union was in resisting its inclusion,<sup>4</sup> the affirmative clause 2(a) requiring the employer to bargain will be enforced.

While, as the event showed, the union and the petitioner were able to at last agree on a prerogative clause in somewhat modified terms, the union continued throughout to be as vigorously opposed to any clause of that kind as the employer was in favor of it. It was not, therefore, as the board finds, the steadfastness of the employer alone, in insisting on his point. It was the steadfastness of employer and union,<sup>5</sup> the one in proposing, the other in opposing, a clause of this kind, which the employer felt it ought, and the union felt it ought not, to have, which prolonged the negotiations. It was not any general unwillingness on the part of the petitioner to negotiate a contract satisfactory to itself as well as the union.

Before the enactment of the National Labor Relations Act, as amended, there was, despite the decisions of the

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<sup>4</sup> Though the witness Stafford did testify that the prerogative clause the employer wanted came as a complete surprise to the union and that if inserted it would take all of the union's rights away, and that in the face of the company's insistence that they must have such a clause, they made repeated efforts to by-pass it, he does testify positively (p. 48 appendix to respondent's brief):

"He (Mr. Dibrell) wanted to know if I thought he was bargaining in good faith. I couldn't say he hadn't bargained in good faith—we had just started, that we never could agree to the prerogative clause even if he gave us five hundred dollars a month increase in there. \* \* \*"

<sup>5</sup> *NLRB v. Whittier Mills*, 123 F. (2) 725; *NLRB v. Athens*, 161 F. (2) 8; *NLRB v. Algoma*, 121 F. (2) 603; *Farmers Grain v. Toledo*, 158 F. (2) 109; *NLRB v. Corsicana*, 178 F. (2) 344.

courts to the contrary,<sup>6</sup> some understandable confusion as to what "collective bargaining" required of employers. This was due to the persistence of the board in asserting and pressing its view that the use in the National Labor Relations Act of the words "collective bargaining" meant that the employer had to agree to terms proposed by the union, if in the opinion of the board these terms were reasonable, and that a failure to agree to such terms was a basis for a finding that the employer was not bargaining in good faith. Since, however, that term has been defined in the National Labor Relations Act, as amended, 29 USCA, Sec. 158(d),<sup>7</sup> there is no longer any basis for differences of opinion as to what it means or for board orders in effect requiring the employer to contract in a certain way.

Of the opinion that in the quotation from the examiner's report, set out in note 3 above, the law is correctly stated, and that, in insisting on the prerogative clause, the company was not guilty of refusing to bargain, we order enforcement as to Paragraphs 1(b) and 2(a) and deny it as to Paragraph 1(a).

A True Copy:  
Teste:

Clerk of the United States Court of  
Appeals for the Fifth Circuit.

<sup>6</sup> *Terminal Ry. v. Brotherhood*, 318 U.S. at p. 6; *NLRB v. Bell*, 91 F. (2) 509; *NLRB v. Lorillard*, 117 F. (2) 921.

<sup>7</sup> "(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession; \* \* \*".

## APPENDIX B

## ARTICLES OF AGREEMENT

BETWEEN

AMERICAN NATIONAL INSURANCE COMPANY

AND

OFFICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL NUMBER 27OF THE  
AMERICAN FEDERATION OF LABOR

This agreement is made by and between the American National Insurance Company, hereinafter referred to as the Company, and the Office Employees International Union, Local No. 27, hereinafter referred to as the Union.

The contracting parties desire that a maximum of well-being, contentment, and good will should result from the friendly deliberation on and fair disposition of all problems arising in the management-employee relationship.

ARTICLE I  
Recognition

The Company recognizes the Union as the sole collective bargaining representative for all employees in the Home Office of the Company at Galveston, Texas, but excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads and all other supervisors as defined in the Labor-Management Act.

## ARTICLE II

### Bargaining

*Section 1:* The Company, through its appointed representatives, will recognize the bona fide representatives of Office Employees International Union, Local No. 27, as the exclusive representative of all the said employees at its Home Office in Galveston, Texas, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

*Section 2:* The Company will, pursuant to the provisions hereinafter contained, governing "grievances" provide for the handling on the Company's part of such disputes or disagreements as to interpretation and administration under the contract, presented as grievances, as shall arise during the term of the contract.

*Section 3:* The business representative of the Union shall have access only to the office of such representatives of the Company as shall be designated to receive him for the purpose of presenting grievances to such representative. It is, of course, agreed that the Union will keep the Company advised as to the identity of its business representative and that the Company will keep the Union advised as to the identity of the Company representative designated to discuss such matters with him.

## ARTICLE III

### Functions and Prerogatives of Management

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise dis-

discipline an employee for violation of such rules or for other proper and just cause.

The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union in his behalf, shall have the right to have such decision reviewed by top management officials of the company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration.

#### ARTICLE IV Promotions and Demotions

For the purposes of this article, the term "promotion" means the elevation of an employee from one lettered classification in the attached wage promotion plan to the next higher lettered classification, and the term "demotion" means the lowering of an employee from one lettered classification in such attached wage promotion plan to the next lower lettered classification.

All promotions and demotions shall be approved in advance by a committee to be set up and continue in existence throughout the term of this contract, consisting of three (3) members designated by the company, and two (2) members designated by the Union, which union designated members shall be employees of the Company within the bargaining unit. One of the Company designated representatives shall

act as chairman of the committee. All decisions of the committee shall be made by majority vote, the chairman voting only in case of a tie. Such voting shall be by secret ballot, each member of the committee being entitled to one vote only. The Union shall be entitled to have present, in an advisory capacity only, at such meetings, its local business representative, and an international representative, who shall be entitled to participate in the discussions, but shall not be entitled to any vote. All decisions of such committee so reached by majority vote shall be recorded in minutes to be kept of such committee's meetings and shall be final and binding upon both the Union and the Company. Union shall be furnished with a copy of such minutes.

The Personnel Department of the Company shall, from time to time, in advance of making any promotions or demotions, recommend such promotions or demotions to the chairman of the committee. Upon receipt of such recommendations from the Personnel Department, the chairman of the committee shall notify the local business representative of the Union of the names of the employees to be affected by such promotion or demotion, and the character of the promotion or demotion recommended. Upon receipt by such business representative of such notice from the chairman of the committee he shall, within one (1) week thereafter, notify the chairman of the committee of the union's desire for discussion of any of such recommended promotions or demotions by the committee, and upon receipt of such notice from the business representative that such discussion and consideration is desired, the chairman will call such committee into session at the earliest agreeable time to all parties concerned, but in no event later than two (2) weeks from receipt of such notice from the business representative. In the event the Union, through its

business representative, shall fail to notify the chairman of the committee that it desires discussion and determination as to any of such recommended promotions or demotions within one (1) week from receipt of such notice, then the chairman of the committee shall notify the Personnel Department of the Company that it is free to make such recommended promotion or demotion.

Where the service record, physical fitness, application, ability to perform the duties of a higher position, skill and efficiency of the employees recommended for promotion or demotion are relatively equal, the committee will consider seniority as outlined and defined in the succeeding article numbered 6 hereof, as the controlling factor in the approval or disapproval of such promotions and demotions.

Nothing contained in this article shall be construed to in any manner limit the right of the Company to make such temporary assignments of work as may in its opinion be necessary to assure the uninterrupted continuance of its business.

## ARTICLE V

### Discharge of Employees

*Section 1:* The Company agrees that upon discharge of any employee, upon demand from such employee, it will furnish to such employee a written statement as to the reason or reasons for discharge, and that such discharged employee may present as a grievance, under the machinery hereinafter provided, his dissatisfaction with such discharge. If the final determination of such grievance is that such discharged employee was unjustly discharged, such employee shall be reinstated immediately to his former position without loss of seniority rank and shall be entitled to compensa-

tion for time actually lost in each work week at his regular rate of pay.

*Section 2:* An employee who resigns or is laid off because of lack of work will, upon his request, be furnished with a statement by the Company as to the character of his service with the Company.

## ARTICLE VI

### Seniority

Seniority shall be defined as the length of service since the last date of hiring. Length of service with the Company is the length of uninterrupted employment with the Company commencing with the latest date of hiring. For the purpose of promotions, seniority shall be based upon length of continuous service in the applicable job classification. The Company's record in respect to last employment date and length of service on each job classification shall be conclusive.

New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first three (3) months of actual employment and will receive no continuous service credit during such period. At the end of the probationary period the employee's seniority shall be retroactive to the date of hire.

Seniority will be lost by any act which breaks the continuous employment with the Company.

An employee who leaves the employ of the Company as a result of his induction into the Armed Forces of the United States, shall upon reinstatement on the Company's active payroll be given continuous service credit for the time served in the Armed Forces. Continuous service credit shall discontinue upon voluntary re-enlistment in the Armed

Services. It is understood that the Company shall reinstate as required by law, employees who left their positions upon induction into the Armed Forces of the United States.

Where a "Temporary employee" or a "Part-time employee" is permanently employed on full time, the aggregate of his temporary or part time period shall not be added to his period of regular employment in determining length of service, but his service shall date from the beginning of his most recent full time employment.

"Continuous Service" shall be broken by the quitting or discharge of an employee.

## ARTICLE VII

### Work Day and Work Week

The established work week shall consist of five consecutive days beginning on Monday, and the normal work day shall be eight hours of work which shall be consecutive except for a lunch period of one hour or less.

## ARTICLE VIII

### Wages

*Section 1:* The Company shall pay the employees covered by this agreement wages in accordance with Exhibit "A" attached hereto and made a part hereof (hereinafter called the "regular rate").

*Section 2:* For work performed not in excess of forty (40) hours per work week, the Company shall pay wages at the regular rate.

*Section 3:* For any work performed in excess of forty hours per work week, the Company shall pay wages at one and one-half times the regular rate. When overtime work is required in any department or section thereof such overtime

work shall be offered among the employees of such department or section thereof equally, provided, however, that the Company reserves the right to put other employees of its own choosing on such work if, in the opinion of the Company, such act becomes necessary.

*Section 4:* Any employee required to work on the following days shall receive pay at the rate of two times the regular rate, and if not required to work on such days, shall receive pay for such days at the regular rate.

New Year's Day

Fourth of July

Labor Day

Thanksgiving Day

Christmas Day

The afternoon of Christmas Eve

The afternoon of New Year's Eve

and if any such day (other than Christmas Eve or New Year's Eve) falls on a Sunday, then the following Monday shall be observed as the Holiday.

In the event Christmas Eve and New Year's Eve fall on either a Saturday or a Sunday, the afternoon of the preceding Fridays shall be observed as such half-holidays.

*Section 5:* Employees of this Company shall be paid at the regular rate for scheduled working time lost from employment with this Company on account of jury service.

## ARTICLE IX

### Vacations and Leave

*Section 1:* Vacations with pay are granted after continuous full time service of one year. No vacations are granted to part time employees with less than twenty (20) hours of

service per week. Part time employees with 20 hours or more per week of continuous service for one year or more are granted one-half of the vacation credits of full time employees.

No vacation as provided in this article may be taken except during the period beginning April 1st and ending November 30th in any calendar year.

Employees whose last date of continuous employment began in the preceding calendar year receive 2 weeks vacation with pay upon completion of the first year of continuous service; except that employees whose continuous service started in December of the previous calendar year receive 2 weeks vacation with pay upon completion of eleven months of continuous service.

Employees whose last date of continuous employment began earlier than in the preceding calendar year receive two (2) weeks vacation with pay which may be taken any time in the applicable calendar year during the vacation period stated above.

An additional day of vacation is allowed in lieu of a paid holiday within a vacation period. Vacations must be taken in periods of not less than five (5) consecutive working days.

No more than two weeks of paid vacation is allowed during any one calendar year. Vacations are not cumulative from year to year.

Pay in lieu of vacation will be allowed upon termination of employment to employees whose date of continuous employment began earlier than in the preceding calendar year, provided the employee has given advance notice of at least two full weeks of his intention to terminate his employment and such termination of employment is effective after March 31st of the current year.

However, any vacation right that has been earned by employees whose continuous employment began in the preceding calendar year will be paid in lieu of vacation if termination of services occurs before the vacation has been taken.

No pro-rata vacation rights will accrue at any time and any vacation rights which a continuation of services might have secured will cease upon termination from the company's services.

"Continuous service" when used in determining vacation rights shall mean the period of uninterrupted employment from the date of last employment. The following interruptions resulting in absence from work shall not have detrimental effect upon the employee's "continuous service" record and shall be considered as time worked for the purpose of this section which is devoted exclusively to vacations:

- (a) Sickness or injury, proved by a physician's certificate or absence due to sickness when excused by an authorized representative of the company of a combined duration not exceeding six (6) weeks during first year of employment or two (2) months after one (1) year of employment.
- (b) Jury duty or compulsory appearance in court.
- (c) Vacations in accordance with the provisions of this section.
- (d) Leave of absence of two (2) weeks or less during any one year.

Leave of absence in excess of two (2) weeks for reason other than disabling illness or accident will reduce vacation rights by one-half (1/2) day for each such excess two (2) weeks of absence. Leave of absence due to sickness, injury or accident in excess of the period stipulated in part (a)

above will reduce vacation right at the option of the Company by one (1) day for each additional month of absence. The Company's record in respect to last employment date and continuous service shall be conclusive.

Vacations will be assigned by the Department Manager and insofar as possible, consideration will be given to the employee's selection of the vacation time. Employees with seniority will have first choice for vacation dates, which choice will be granted provided the operating efficiency of the Company is not, in its opinion, thereby impaired, but the Department Manager shall not be required to consider seniority for the second week of vacation if an employee desires to split the vacation, or if after selection is made, a change in schedule is desired.

The Company reserves the right to schedule vacations in accordance with the conditions and requirement assuring uninterrupted operating service.

*Section 3:* During the life of this agreement, the Company agrees, during each calendar year, to grant leaves of absence for such employees as may be delegated by the Union to attend State and National conventions; provided, that the aggregate of such leaves shall not exceed four (4) persons in number and three (3) weeks in length. Within these limits the Union may use such leaves of absence as it sees fit; provided, that no more than two (2) employees of the Company shall be absent upon such leaves at the same time. The Union is required to give one week's advance written notice of the identity of the employees for whom such leaves of absence are desired, and seniority in respect to promotions and in respect to choice of vacation dates as to such employees shall not be affected by such leave of absence.

**Section 3:** Leave of absence shall be understood to mean an absence from work without pay, requested by an employee and consented to by the Company in advance, for an agreed period of time and for good cause. Any absence from work on the part of an employee without such prior agreement and consent by the Company, or his failure to report to work at the end of such leave, may at the option of the Company, be treated as a "quitting" on the part of such employee.

Requests for leave of absence must be submitted by the employee to the Department Manager. The Company retains the exclusive right to approve or disapprove requests for leave of absence. Seniority will not accumulate during a leave of absence granted for reasons other than disabling illness or accident of the employee.

In the event of disabling illness or accident, the employee is requested to inform the Department Manager by 9:00 o'clock a.m. of the first day of absence for such cause in order to prevent possible termination of employment. Sick leave will then be allowed automatically for a period of time consistent with the nature of disabling illness or accident, but not exceeding thirty (30) days. The Company maintains the right to require satisfactory evidence or medical certificate to prove inability to work.

## ARTICLE X

### Discrimination and Union Activity

**Section 1:** The Company agrees that it will not interfere with, restrain, or coerce employees because of membership or lawful activity in the Union, nor will it, by discrimination in respect to hire, tenure of employment or any term or condition of employment, attempt to discourage membership in the Union.

**Section 2:** The Union agrees that neither the Union nor its members will intimidate or coerce the employees in respect to their right to work and will not attempt to force Union activity or membership on such employees. The Union further agrees that there shall be no solicitation of employees for Union membership on Company time. The Union shall not discriminate in any way as to the admission to or membership in the Union, or otherwise, against any persons who are now, or hereafter may be, employed or be restored to or reinstated in employment by the Company, provided such persons meet the requirements of the Union constitution and by-laws as to eligibility for membership.

**Section 3:** Both the Company and the Union recognize that neither membership nor non-membership in the Union is a requirement for the obtaining or retaining of employment with the Company.

## ARTICLE XI

### Strikes and Lockouts

There shall be no strikes, slow-downs or work stoppages of any kind during the life of this agreement, and there shall be no lockout of employees by the Company during said term.

## ARTICLE XII

### Grievances

**Section 1: Discussion of request or complaint.** Any employee who believes that he has a justifiable request or complaint shall discuss the request or complaint with his or her immediate superior in an attempt to settle it.

**Section 2: Definition of Grievance.** "Grievance" as used in this agreement is limited to a complaint which has not been settled as a result of the discussion required in Section 1

hereof, or which involves the interpretation or application of, or compliance with, the provisions of this agreement.

*Section 3: Grievance Procedure.*

- (a) A grievance which has not been settled within 5 days as a result of the discussion required in Section 1 hereof, to be considered further must be filed promptly in writing with the employee's Assistant Department Head stating fully the nature of the grievance and the grounds for complaint or dissatisfaction. The Assistant Department Head shall answer the grievance within 10 days from date of presentation in writing, signing and dating his reply and returning one copy thereof to the employee or the steward. If the Assistant Department Head's decision is not appealed within 10 days, the grievance shall be considered on the basis of the decision made and shall not be eligible for further appeal.
- (b) In order for a grievance to be considered further, it shall be appealed in writing to the Department Manager within 10 days from the date of the Assistant Department Head's written reply. An appealed grievance shall be discussed in an attempt of settlement at a mutually convenient time between the steward or employee and the Department Manager and answered within 10 days from appeal. The Department Manager's decision in writing, after signing and dating it, shall be given to the steward or employee. If the Department Manager's decision is not appealed within 10 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

- (c) In order for a grievance to be considered further, written notice of appeal by the business representative of the Union shall be served to the Company's Secretary, or his delegated representative, within 10 days of the date of the Department Manager's written decision. Discussion of the appealed grievance shall take place at the earliest date of mutual convenience following receipt of the notice of appeal, but not later than 15 days after notice is received by the Company's Secretary, or his delegated representative, unless by mutual agreement a different date for disposition is agreed upon.

Grievances discussed in such meetings shall be answered in writing by the representative of the Company within 15 days after the date of such meeting; unless by mutual agreement a different date for disposition is agreed upon. Whenever either party concludes that further meetings can not contribute to the settlement of the grievance, the dissatisfied party may, by written notice within 15 days from the date of the written decision of the last previous meeting, appeal the grievance to arbitration, provided the grievance is subject to review by arbitration under the terms of this contract.

*Section 4:* If either party shall elect to submit a grievance to arbitration, it shall give written notice to the other party of intention to arbitrate. Such notice shall contain a statement specifying the grievance. Upon receipt of any such notice, the parties shall, at the earliest date of mutual convenience, confer in an effort to select by mutual consent, an impartial board of arbitration.

The board of arbitration shall consist of one arbitrator appointed by the Union and another by the Company and a third appointed by the first two arbitrators. In the event that the first two arbitrators are unable to agree on the appointment of the third arbitrator, such third arbitrator shall be appointed by the Senior District Judge of the United States District Court for the Southern District of Texas.

The expense incident to the appointment and services of the third arbitrator shall be borne equally by the Union and the Company.

*Section 5:* Nothing in this Article shall be construed to deprive any individual employee or group of employees of their right at any time to present grievances to the Company or to have such grievances adjusted without the intervention of the Union, as long as the adjustment shall not be inconsistent with the terms of this contract, and provided the Union is given notice and opportunity to be present at such adjustment.

### ARTICLE XIII

It is agreed that the Union shall be furnished space for the posting of proper notices, the location and area of such space to be agreed upon between the Company and the Union.

### ARTICLE XIV

#### Conditions

This agreement is subject to the provisions of existing laws, regulations, applicable Executive Orders, and other orders of duly constituted authorities of the United States and the State of Texas, which are now and may hereafter be in force during the term of this agreement.

**ARTICLE XV****Term**

This agreement shall remain in full force and effect until July 12, 1951, provided, that unless one party shall give written notice to the contrary to the other party not later than sixty (60) days prior to such expiration date, this agreement shall be automatically renewed for a period of one year from such expiration date. Unless similar notice be given by one party to the other, such agreement as so renewed shall be automatically renewed for another period of one year.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this thirteenth day of January, 1950.

**AMERICAN NATIONAL  
INSURANCE COMPANY**

**OFFICE EMPLOYEES INTER-  
NATIONAL UNION  
Local No.27, A. F. of L.**

By: **L. Mosele**  
**Secretary-Comptroller**

**A. G. Wilson  
Jeanne V. Beal  
Lee V. Imlay  
Shirley Dial**

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1951

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No. 126

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NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

AMERICAN NATIONAL INSURANCE COMPANY, *Respondent*

---

On Writ of Certiorari to the United States Court  
of Appeals For the Fifth Circuit

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BRIEF FOR AMERICAN NATIONAL  
INSURANCE COMPANY

---

M. L. COOK,  
LOUIS J. DIBRELL,  
CHAS. G. DIBRELL, JR.,  
*Attorneys for Respondent,*  
AMERICAN NATIONAL INSURANCE  
COMPANY



# INDEX

	PAGE
OPINION TO WHICH THIS WRIT OF CERTIORARI IS DIRECTED . . . . .	1
JURISDICTION . . . . .	2
QUESTIONS PRESENTED . . . . .	2
INTRODUCTORY STATEMENT . . . . .	3
HISTORY OF THE CASE . . . . .	7
SUMMARY OF ARGUMENT . . . . .	25
I . . . . .	25
II . . . . .	27
III . . . . .	29
ARGUMENT . . . . .	30
I . . . . .	30
II . . . . .	46
III . . . . .	54
CONCLUSION . . . . .	58
APPENDIX A . . . . .	59

## II

# AUTHORITIES

### CASES

### PAGE

Agwilines v. N.L.R.B. (5th Cir.), 87 F. 2d 146	31
Amalgamated Association of Street Electrical Railway and Motor Coach of America, Division 998, et al., v. Wisconsin Employment Relations Board, 340 U.S. 383, 71 S. Ct. 359	39
Appalachian Electric Power Co. v. N.L.R.B. (4th Cir.), 93 F. 2d 985	57
Bethlehem Steel Co. v. New York Labor Board, 330 U.S. 767, 67 S. Ct. 1026	39, 41
Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al., v. Toledo P. & W.R.R., 321 U.S. 50, 64 S. Ct. 413	37, 43
Farmers Grain Company v. Toledo P. & W.R.R. (7th Cir.), 148 F. 2d 109	36
Federal Trade Comm'n. v. American Tobacco Co., 274 U.S. 543, 47 S. Ct. 663	50
Hamilton-Brown Shoe Co. v. N.L.R.B. (8th Cir.), 104 F. 2d 49	32
Hartsell Mills Co. v. N.L.R.B. (4th Cir.), 111 F. 2d 291	51
Hill v. State of Florida, ex rel. Watson, 325 U.S. 538, 65 S. Ct. 1373	39
LaCrosse Telephone Corp. v. Wisconsin Board, 336 U.S. 18, 69 S. Ct. 379	39
Layne & Bowler Corp. v. Western Wells, 261 U.S. 387, 43 Sup. Ct. 423	49
McQuay-Norris Mfg. Co., v. N.L.R.B. (7th Cir.), 116 F. 2d 748	51
N.L.R.B. v. Athens Mfg. Co. (5th Cir.), 161 F. 2d 8	35
N.L.R.B. v. Bell Oil & Gas Co. (5th Cir.), 91 F. 2d 509	31
N.L.R.B. v. Fulton Bag and Cotton Mills (5th Cir.), 175 F. 2d 675	55
N.L.R.B. v. Highland Park Mfg. Co. (4th Cir.), 110 F. 2d 632	33
N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S. Ct. 615	5, 30, 32
N.L.R.B. v. Pittsburgh Steamship Co., 340 U.S. 498, 71 S. Ct. 453	3, 29, 46, 49, 50
N.L.R.B. v. P. Lorillard Co. (6th Cir.), 117 F. 2d 921	32, 43
N.L.R.B. v. Reed & Prince Mfg. Co. (1st Cir.), 118 F. 2d 874	51, 52
N.L.R.B. v. Sands Mfg. Co. (6th Cir.), 96 F. 2d 721	32, 33
N.L.R.B. v. Sunshine Mining Co. (9th Cir.), 110 F. 2d 780	32, 33
N.L.R.B. v. Thompson Products, Inc. (6th Cir.), 97 F. 2d 13	58
N.L.R.B. v. Tower Hosiery Mills (4th Cir.), 180 F. 2d 701	33
N.L.R.B. v. Union Stages (9th Cir.), 99 F. 2d 153	56
N.L.R.B. v. Whittier Mills (5th Cir.), 123 F. 2d 725	34
Pennsylvania R. Co. v. Chamberlain, 288 U.S. 333, 53 S. Ct. 391	57

### III

	PAGE
Plankington Packing Co. v Wisconsin Board, 338 U.S. 953, 70 S. Ct. 491.....	39
Richfield Oil Corp. v. N.L.R.B. (9th Cir.), 143 F. 2d 860.....	51, 53
Terminal Railway Association of St. Louis v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 63 S. Ct. 420.....	30, 31
United Auto Workers v. O'Brien, 339 U.S. 454, 70 S. Ct. 781.....	39
Universal Camera Corporation v. N.L.R.B., 340 U.S. 474, 71 S. Ct. 456.....	2, 3, 29, 46, 54
Virginian Railway Co. v. System Federation, 300 U.S. 515, 57 S. Ct. 592.....	37
Washington Virginia & Maryland Coach Co., v. N.L.R.B., 301 U.S. 142, 57 S. Ct. 648.....	57



IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1951

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No. 126

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v.

AMERICAN NATIONAL INSURANCE COMPANY, *Respondent*

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On Writ of Certiorari to the United States Court  
of Appeals For the Fifth Circuit

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BRIEF FOR AMERICAN NATIONAL  
INSURANCE COMPANY

---

Opinion to Which This Writ of Certiorari  
is Directed

This Writ of Certiorari has been granted to review an Opinion by the United States Circuit Court of Appeals for the Fifth Circuit reported at 187 F. 2d 307 which denied

in part enforcement of a Decision and Order of the National Labor Relations Board reported at 89 N.L.R.B. Reports 185.

### **Jurisdiction**

The jurisdiction of this Court is correctly stated in Petitioner's Brief, and no questions are raised in respect thereto.

### **Questions Presented**

#### **I.**

(a) Is the so-called "prerogative clause", being Article III in Respondent's contract with the Union assailed by the Board in this proceeding in and of itself unlawful or in anywise forbidden or prohibited, and if so, in what particulars and to what extent?

(b) If such clause is not in and of itself unlawful or in anywise forbidden or prohibited, how, then, can Respondent have been guilty of the violation of the Act found by the Board by reason of seeking the inclusion of such clause in its contract with the Union?

#### **II.**

Are not the factual determinations and findings made by the Court of Appeals below upon its review of the record, viewed as a whole,

(a) that there is no substantial evidence therein supporting the Board's finding that Petitioner has been guilty of refusing to bargain collectively with the Union, and

(b) that Petitioner, in law and in fact, has not been guilty of such unfair labor practice,

entitled to affirmance by this Court on the authority of  
UNIVERSAL CAMERA CORPORATION V. NATIONAL LABOR

RELATIONS BOARD, 340 U.S. 456, and NATIONAL LABOR  
RELATIONS BOARD V. PITTSBURGH STEAMSHIP CO., 340  
U.S. 453?

### **Introductory Statement**

On the 13th day of January, 1950, Petitioner, American National Insurance Company, hereafter called the Company, having completed its negotiations in respect thereto with Office Employees International Union, A. F. L., Local 27, hereafter called the Union, entered into and signed with such Union a written contract covering all phases of rates of pay, wages, hours of employment, and other conditions of employment as to the employees in the Company's Home Office in the City of Galveston, Texas, within the bargaining unit represented by such Union, as to which any negotiation had been sought by such Union. Such contract, by its terms, remained in effect until July 12, 1951, and provided that it would thereafter be automatically renewed for additional periods of one year each, unless and until either party thereto gave to the other party written notice of its desire to negotiate changes therein. Such contract is set forth in full on pages 68 through 84 of Vol. I of the T. of R. before this Court. Prior to the expiration date of such contract the Union gave notice of its desire to negotiate changes therein, and additional bargaining between the parties thereto was then instituted for the negotiation of a new contract between them, which new contract was signed on August 10, 1951. Such new contract, by its terms, expires August 10, 1953, and in addition to a provision for automatic renewal, also provides for reopening for negotiation of wage rates only on August 10, 1952, in the event of increase in the B. L. S. Cost of Living Index as provided in such contract. In order that this Court may by comparison between such contracts discover the changes which resulted from such later negotiations, the presently

existing contract is printed as Appendix A to this Brief.

On the 5th day of April, 1950, the National Labor Relations Board, hereafter called the Board, with full knowledge that such original contract had been negotiated between and signed by the parties and in possession of a copy of same, entered its Final Order in Case 39-CA-33 styled In the Matter of American National Insurance Company and Office Employees International Union, A. F. L., Local 27, which Decision and Order held the Company to have been guilty of the unfair labor practice of refusal to bargain collectively with the Union in the negotiation of such contract in violation of Sec. 8(a) (5) of the Labor-Management Relations Act of 1947, hereafter called the Act. The Board further held that the Company's action in insisting on the so-called prerogative clause, appearing as Article III in said contract, constituted, per se, a violation of Section 8(a) (5) and (1) of the Act. A necessary result of such holding is to cast doubt upon the validity of the original contract negotiated between the Company and the Union, as well as the present contract in existence between them, which contains the same Article, because the inclusion of such Article has been found by the Board to have been obtained by an unlawful act of the Company. The Board's Decision and Order further specifically found and held under the heading "The Remedy", that "Effectuation of the policies of the Act requires that the Respondent (Company) be directed to cease and desist from refusing to bargain in good faith by imposing as a condition of agreement that the Union, as the exclusive bargaining representative of Respondent's employees in the appropriate unit, agree to a provision such as the prerogative clause involved herein," which simply means that the Company is, by the Board, specifically directed and admonished that it may not, in its further and future negotiations for renewal of

its contract with the Union, seek to retain the inclusion therein of such provision. By so doing, the Board sought to substitute and require its own concept as to what should or should not be in a collective bargaining contract between the Company and the Union for that of the contracting parties and further sought to coerce the Company in its future contract negotiations with the Union as to what should and should not be included in any contract between them.

Feeling that the Board had neither lawful nor reasonable right to do this, and in so doing had run considerably afoul of the over-all purpose and intent of the Act and the specific provisions of Sec. 8(d) thereof, and completely ignored and held for naught the holding of this Court in *N. L. R. B. v. JONES & LAUGHLIN STEEL CORPORATION*, relied upon by the Trial Examiner in his Intermediate Report<sup>1</sup> 'the Company sought and obtained a review of such final Decision and Order of the Board in the United States Circuit Court of Appeals for the Fifth Circuit, hereafter sometimes

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<sup>1</sup> *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 301 U.S. 1.

"The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' \* \* \* The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. \* \* \* The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion."

called the Court of Appeals below. A reading of the Company's Petition for Review filed with the Court of Appeals below appearing at pages 1 and 2 of Vol. I of the T. of R. is specially requested in order that this Court may know therefrom just what complaint the Company made in such Court against the Board's Decision and Order. The Board, in its answer to such Petition for Review sought enforcement of its Order in full.

The Company felt and has urged in its brief filed in the Court of Appeals below that the fundamental difference between it and the Union which pervaded and continued throughout the entire course of contract negotiations between them was simply one of concept as to the legal requirements of the Act controlling the technique of bargaining between the parties as to the reaching and consummation of a collective bargaining contract between them. Simply stated, the question is—"Is an employer required by the Act to agree that differences which may arise between itself and its employees within the unit represented by the Union during the existence of a contract between them, (1) as to the selection and hiring of such employees, (2) as to the discharge or discipline of employees for cause, (3) as to the maintenance by the employer of discipline and efficiency of employees, and (4) as to schedules of work, must be submitted for final determination to and resolved by outside arbitration?" We will attempt to show herein, as we did to the Court of Appeals below, that this question of arbitration, together with the question of wages to be paid, became from the outset of negotiations between the Company and the Union and remained thereafter until agreement was finally reached and contract signed, the only real differences existing between them which hampered and delayed final and complete agreement as to such contract. ~~We will~~ further attempt to demonstrate that at the very

outset of such negotiations, the Union concluded, and continued thereafter to maintain, that the Company was, by its refusal to agree to outside arbitration of such questions, attempting to deprive the Union of its rights guaranteed under the Act, and conversely, that the Company at all such times conceived and maintained that it had the lawful right under the Act not to agree with the Union as to such arbitration.

As background for this Courts' consideration in its determination of the issues involved in this proceeding, we submit the following:

### **History of the Case**

It is abundantly apparent from the Record before this Court that the writers of this Brief have personally been in charge of contract negotiations for the Company since the very inception of this matter, and that if any mistakes of law or of propriety of bargaining technique have been made, they inescapably were and remain our mistakes. From this fact, however should flow the realization that, having been in the thick of the fight from the beginning, we must, of necessity, know, at least as well as any other persons concerned in the matter, exactly what went on during the bargaining between the parties, and the true nature of and real, underlying reasons for the positions taken and maintained by the Company during such negotiations. We also had to the best of our abilities studied the applicable provisions of the Act as to collective bargaining requirements and relevant decisions of this Court, as well as the various Courts of Appeals below, in an effort to obtain a reasonable understanding of such requirements. We, accordingly, respectfully pray that this Honorable Court, in considering and weighing our statement as to what happenings tran-

spired, as well as concerning our reasons for the taking and maintaining of positions, will accord to us not only sincerity of purpose but what we thought to be a reasonable understanding of the requirements of the Act as well.

All of the contract negotiations between the parties took place between the Union's committee, of which C. A. Stafford, one of its International Vice-Presidents was, except for some few meetings at which the Union was represented by an attorney, the chairman, and the Company's committee, of which Louis J. Dibrell, one of its attorneys, was chairman. The respective recollection of Stafford and Dibrell as to the negotiations appear in Vol. III and Vol. II of the T. of R. before this Court, and the Courts' attention is specifically invited thereto. From such record it appears that the Union, after having been duly certified as exclusive bargaining agent on September 2, addressed to the Company under date of November 13, 1948, its first written request for negotiation of a contract, pursuant to which request, negotiations were commenced between the parties on November 30, 1948. Meetings of a preliminary nature were held on such date, and again on December 15, 1948. At the second of such meetings, the Union completed its initial proposal as to a contract by adding thereto its demands for increase in wage scale and other proposals. Such originally proposed contracts and addendum thereto appears as General Counsel's Exhibits 8 and 9 on pages 48 through 63 of Vol. II of the T. of R. This Courts' attention is invited to such proposal, from which it will appear, as seems customary and usual in the approaches by Unions generally to contracts with employers, the Union started out "asking for the moon", thus reserving unto itself great latitude in receding from position and demands which it quite obviously never seriously proposed in the first place.

On January 10, 1949, the third meeting between the

committees occurred, which meeting has been characterized by Mr. Stafford, the Union's chairman, as follows:

"We went into the meeting (January 10) to negotiate a contract. This was to be our first down-to-earth negotiation."  
(R. V8l. III, page 42.)

Early in the January 10, 1949, meeting, Mr. Dibrell verbally stated to the Union that at least one of the provisions which the Company thought ought to be contained in a contract between them was, in outline, what later became the so-called "prerogative clause", being Article III of the contract.

The basic reason for the taking by the Company of such position was its genuine and justifiable concern as to the workability of the arbitration provisions in the contract originally proposed by the Union. The Company's concern as to such arbitration was then and still remains its chief concern in the matter. Specifically, the Union had proposed that all promotions and demotions were to be made entirely on the basis of seniority which was to have been cumulative beginning with the date of first employment. Bearing in mind that this was to be the first contract to be imposed upon the operations of the Company which had been going on for more than 40 years, the Company, among other things, felt that seniority alone could not possibly be made the proper determining factor as to promotions and demotions. The Company further felt that the intelligent, efficient operation of its business required that its management continue to have and enjoy at least the normal and customary functions and prerogatives of management, which it then had. Ordinary observation of the practices normally followed by arbitrators had convinced the Company that the general result of arbitration was mere compromise of the

basic problems submitted to arbitration. The Company then believed, and still believes, that arbitrators normally do not resolve questions submitted to them for determination purely on the basis of the respective merits of the opposing sides of such controversy, but on the other hand, seek to find and enforce only such grounds for settlement as they believe the respective parties to the controversy should, by compromise, be willing to agree upon. From this, the Company reached the conclusion that arbitration as proposed by the Union would simply substitute the process of arbitration for that continued negotiation between the parties for the settlement of their differences, which, we think, is, in reality, contemplated by the Act. In other words it was thought that arbitration as proposed by the Union would simply amount to a negation of the principle of continued negotiations between the parties for the settlement of such differences as might arise between them.

In order to avoid this result, the Company proposed that there be no submission to and determination by outside arbitration of such questions between it and the Union as would, in probability, result during the existence of the contract.

Immediately upon such statement as to the Company's views, the Union went into deadlock with the Company upon the lawfulness thereof, as is evidenced by the following testimony of Mr. Stafford:

"That came as a complete surprise to the Union. The Union has in the course of negotiations with various companies come face to face with prerogative clauses, but this is the first time in my experience I came face to face with such a clause. We explained to management, in the strongest language possible, that the agreement by the Union to such a clause would take away the right given us under the Taft-Hartley Act of 1947 in respect to negotiation of hours, rates of pay and

other conditions of employment."  
(R. Vol. III, page 43.)

It is further made apparent that the Union at such time knew that the basic question then beginning to develop between it and the Company was not so much what prerogatives should be reserved to management, but was, rather, whether or not the decisions of the Company made in respect to same should be subject to review by arbitration, by Mr. Stafford's following statement:

"The Company based their arguments on arbitration."  
(R. Vol. III, page 44.)

That both Company and the Union then understood the true nature of the disagreement that was then developing between them, as well as the views of each on the subject is clearly shown by Mr. Stafford's following testimony:

"This is all January 10, and principally as I remember it were the proposals given to us earlier in the meeting on the prerogatives of Company. We told Company we were prepared to grant prerogative to management of the business in the fields we have no business to enter, but in those fields where we were certified as the bargaining agent, we definitely expected and would demand to retain the rights granted us by law.

"Louis Dibrell informed us there was no law in the land that could force any Company to go to arbitration. That is a difference of opinion on arbitration."  
(R. Vol. III, page 44.)

Actually, if a meeting of the minds on the question of arbitration could have been at that time reached by the Union and the Company, a contract would have been then made between the parties. Mr. Stafford testified:

"Finally Mr. Dibrell stated to me, 'If we can agree, if the Union will agree to accept that prerogative clause, I can guarantee you a contract within an hour or two.'"  
(R. Vol. III, page 47.)

But, instead of agreement, an actual deadlock developed as is evidenced by Mr. Stafford's following statement:

"We were deadlocked on II-a". (Later paragraph III of the Contract.)  
(R. Vol. III, page 47.)

Almost immediately upon the Company's statement to the Union in the January 10th meeting as to its views in respect to arbitration, the Union began to accuse the Company of refusal to bargain collectively with it in good faith and then and there began the long and protracted argument on such subject, which continued, except during the meetings at which the Union was represented by an attorney, right down until the actual hearing before the Trial Examiner and which has continued pro and con throughout all of the briefs and arguments before the Board, the Court of Appeals below and still continues before this Court. The question in its inception was and still remains one as to whether or not the Company, in taking and maintaining its position as to arbitration, has acted contrary to the requirements of the Act as to collective bargaining.

The Union's attitude in the beginning and its reaction to the Company's such views was summarized by Mr. Stafford as follows:

"We could never agree to the prerogative clause even if he gave us five hundred dollars a month increase in there."

(R. Vol. III, page 48.)

As further evidence that a deadlock actually existed as early as January 12th, the existence of such deadlock having been later found as a fact by the Court of Appeals below, Mr. Stafford had the following to say as to such meeting:

"It was also brought out at this meeting that under the Taft-Hartley Act Company did not have to recede from any position. That also went for the Union. Now, if the Union wouldn't recede and the Company couldn't, there was only one logical conclusion."  
(R. Vol. III, page 48.)

Meetings were adjourned on January 12th and reconvened on January 18th, at which time, the Company gave to the Union a complete counterproposal which contained in substance the same statement of the Company's position as to the rights of management and as to arbitration of decisions made in the exercise thereof as had been previously orally stated in the January 10th meeting. Its counterproposal is contained in Company's letter of January 17th, 1949, addressed to the Union, appearing as General Counsel's Exhibit 10, page 64, Record Vol. II.

A reading of this letter in relation to the Union's proposals which had thus far been submitted to the Company will demonstrate that it constituted a full and complete counterproposal, clearly and definitely defining and setting forth the Company's position and degree of willingness to agree on all phases of bargainable matters under the Act as to which the ~~Company~~<sup>Union</sup> was seeking any agreement.

The Company, in submitting its counterproposal to the Union, was considerably more forthright and realistic than had been the Union in the submission of its original proposals. The employment by the Company of such bargaining technique in its approach to the matter has subjected it

to considerable criticism both in the Intermediate Report of the Trial Examiner and in the Decision and Order of the Board, because, insofar as we can tell from the most careful study of both of which we are capable, such bargaining technique is the sole subject of the attacks which have been levelled and are now levelled by the attorneys for the Board in their briefs to the Court of Appeals below and to this Court. It is, of course, the sole factual basis for the Trial Examiner's conclusion contained in his Intermediate Report that "Respondent never sincerely intended to bargain with the Union, but, on the contrary, was determined at the outset of negotiation to agree to nothing that would serve in any respect to enhance the Union's prestige or make it appear to the employees as an effective bargaining agency."

It likewise constitutes the only factual basis for the Board's observation set forth in its Decision and Order that "It is clear that from the inception of negotiation the chief obstacle to agreement was the respondent's inflexible position that it would not conclude any contract with the Union unless it accepted the Respondent's so-called prerogative clause either in its original or amended form as described in the Intermediate Report."

Thus, the ancillary, but closely related, question of law arises as to whether or not an employer in order to meet the requirement of the Act as to bargaining technique is required to start as far away from its real objective upon which it is willing to reach agreement as did the Union in this case following the usual and customary procedure of Unions in such matters.

In any event, upon receipt of the Company's counter-proposal, in the January 18th meeting, the Union conceived the idea of soliciting and enlisting the aid of the National Labor Relations Board in its negotiation with the Company,

and Mr. Stafford so stated its position and intention as follows:

"We received the counterproposal. I stated I didn't think they were bargaining, and I thought it was their duty to submit this counterproposal and I expressed the fact that I was going to have to go to the National Labor Relations Board in Fort Worth to find out whether or not they would have to give such a counterproposal. I was closing the meeting out because there was nothing being accomplished. All we could talk about was the prerogative clause, company's position, and the law, and we were getting nowhere fast. I couldn't agree they were bargaining at that time in good faith. I referred back to the statement Mr. Dibrell had made previously and earlier in the meetings, where he himself thought we were deadlocked. Now, I was agreeing with Mr. Dibrell—we were definitely deadlocked. And I didn't know what the next move was. I accused the Company then of not bargaining then in good faith."

(R. Vol. III, page 56.)

At the request of the Company, another meeting was held January 19th, which closed on the following note, according to Mr. Stafford:

"At the end of the meeting we got into another argument over the definition of bargaining. I stated to the Company they were not bargaining with me in good faith, trying to take away my rights as granted under the Taft-Hartley Act of 1947, and I was going to be frank about it, I was going to the Board and get a definition of bargaining, and not only that, I was going to consult some attorneys in Dallas to find out about it. And so far as I knew at the time, I would agree we were deadlocked and there was no use for any further meetings. Mr. Dibrell called in his secretary

and dictated the letter known as Exhibit 11 here (R. Vol. II, page 80), dictated a letter to me stating that I said we were deadlocked and they would meet me on February 7, and I took the letter and the meeting adjourned.

"Q. Did you agree to meeting with them on February 7?

A. No."

(R. Vol. III, page 62.)

Mr. Stafford was as good as his word. A Charge signed by A. G. Wilson, the Union's Business Agent and one of the members of the negotiating committee, was filed by the Union with the Board at Fort Worth on January 28th, accusing the Company, amongst other things, of refusing to bargain in good faith. Apparently, however, due to advice received by him from some other source, Mr. Stafford changed his mind about continuing negotiations with the Company, and on January 31st wrote a letter to the Company (R. Vol. II, page 85) agreeing to the Company's suggestion as to a meeting on February 7th. Such meeting was held, and it, and all subsequent meetings between the Company and the Union were carried on under threat of Board interference, resulting from the filing of such Charge. Apparently the Union felt or at least hoped that the Company, in the face of threatened interference and pressure from the Board, would recede from what it considered to be its lawful rights, but this result did not ensue. On the contrary, the Company, even after the conclusion of the negotiations and the execution of the resulting contract, still found itself required to protest before the Court of Appeals below the continued threatened interference of and pressure from the Board in respect to its lawful bargaining rights and still finds itself at this time before this Court required to seek in this certiorari affirmance of the holding

of the Court of Appeals below that it was and is entitled to continue to maintain its such lawful bargaining rights.

Another meeting was held February 23, and still another on February 24th, at both of which the same impasse resulting from the difference between the Company's and the Union's concept of what was required to meet the collective bargaining provisions of the Act on the question of arbitration still continued to exist.

Under date of March 3, Mr. Dibrell, as chairman of the Company's committee addressed a letter to Mr. Stafford, with a copy shown to Mr. John Thomas, Field Examiner of the Board in which the Company stated the positions taken by both parties at the February meetings. Such letter appears at page 88, Record, Vol. II, and reads in part as follows:

"Please bear in mind that at our first negotiation meeting following receipt by us of a copy of the Charge which Mr. Wilson had filed before the Board against American National Insurance Company, when we asked you what the reason was for your filing the Charge consisting in part of the allegation that the Company was refusing to bargain collectively with you, you stated to us that the reason for such action was 'to make the company get in line.' It is very apparent that in your opinion the National Labor Relations Board has the power and authority under the Act to require this Company to recede from its position that its top management officials should be entitled to make final and binding decisions as to matters set forth in said proposals and to accede to the Union's demand that such questions be determined by outside arbitrations. While this Company stands ready to negotiate with you, it does not agree that such is the law.

"In short, it is the position of this Company that if, in fact, a deadlock presently exists between the Com-

pany and the Union, in these contract negotiations, and that therefore, as stated by you in your letter, 'the time spent in such meeting would be lost by both parties', this is a situation of your making, not the Company's.

"We, therefore, suggest to you that upon reasonable notification, in writing, from you to the Company of your desire to resume negotiations in respect to this contract, such negotiations will be resumed by the Company at a time agreeable to you. If, in view of this letter you desire to meet with us on either March 10th or March 11th, please advise."

Further meetings were had in March during which the Union, for the first time, requested a copy of Company's rules and practices governing employees in its Home Office, *which were then in effect*. Under date of April 1, such then existing rules were furnished to the Union, with a suggestion that after they had given them such study as they wished, they were to contact the Company for the purpose of arranging further negotiation meetings. (Company's letter to the Union, General Counsel's Exhibit 24, R. Vol. II, page 95.)

At this point, we respectfully request of this Court that it bear in mind that the Union's request for "working rules" made in March covered only such rules as were *then in effect* and that such then existing rules were what was furnished to the Union. No negotiations were ever thereafter sought by the Union as to any changes in the scope and effect of such rules, even though it was at the time proposed by the Company in its so-called prerogative clause that one of the functions of management would be the "right to make such rules *not inconsistent with the terms of this agreement* relating to its operation as it shall deem advisable."

The bulk of the attack of the attorneys for the Board

both in their brief addressed to this Court, as well as in their brief addressed to the Court of Appeals below, has been upon the scope and effect of the so-called working rules furnished by the Company to the Union in March, 1949. Actually the contract as finally signed between the Company and the Union exhaustively covered the field of "Promotions and Demotions" in Article IV, "Discharge of Employees" in Article V, "Seniority" in Article VI, "Work Day and Work Week" in Article VII, "Wages" and "Holidays" in Article VIII, and the accompanying Exhibit A, "Vacations and Leaves" in Article IX, and "Paid Sick Leave" as Sec. 4 of Article IX, in accordance with the accompanying letter of transmittal under which such contract was furnished to the covered employees.

Any provisions, therefore, of the "working rules" furnished to the Union by the Company in March, 1949, which would have become inconsistent with the actual terms of the contract as finally reached would have, by virtue of such inconsistency, then become of no further force and effect, and the Company could not thereafter have made any new "working rules" or changes in existing "working rules" which would have been inconsistent with such contract. Of course, the Company, in March, 1949, had "working rules" then in existence which it had had for years. It was one of the very purposes of the contract negotiations then going on to analyze and re-evaluate such rules to the end that they should be kept consistent with the terms of any contract made between the Company and the Union. This is precisely what was done. And the Board's attorneys have not even attempted to suggest, must less demonstrate, the existence since January 12, 1950, of any working rule of the Company which is inconsistent with its contract with the Union. On the contrary, all that the Board's attorneys

have sought to do is to castigate the Company for having had at the time of and prior to the commencement of its contract negotiations with the Union certain working rules in effect which thereafter became inconsistent with the agreement reached with the Union and thereby, because of such inconsistency, became of no further force and effect.

It is said that the Company has abundantly demonstrated the perniciousness of such working rules by the fact that it unilaterally established certain night shifts of work and certain staggered lunch hours during the continuation of its negotiations with the Union. It has not been denied that these matters were discussed with the Union during such negotiations, even though the Union was not then invited to, nor permitted, to control the decisions in respect thereto, and it has not been and is not now, as we understand it, claimed that there has been any such unilateral action on the part of the Company since the existence of its contract with the Union. Nothing then remains except the suggestion that if it saw fit now to do so, the Company could and would establish unilaterally changes in the working conditions of its employees. Inasmuch as the presently existing contract between the Company and the Union exhaustively covers all phases of working conditions of such employees in a manner completely inconsistent with any supposed right on the part of the Company to alter same unilaterally, and without prior negotiation with the Union, it is submitted that such suggestion is wholly unfounded and baseless in fact.

In any event, after the then existing "working rules" had been furnished to the Union, further meetings were arranged and took place commencing early in May. At these meetings the Union was represented by an attorney, but nothing of substance was accomplished during them. They are noteworthy only because of the fact that at no time

during them did the attorney representing the Union accuse the Company of any refusal to bargain collectively in good faith with the Union. A new and complete counterproposal was at such meeting submitted to the Company by the Union through its attorney, which, with only minor changes, contained the same prerogative clause which had been previously submitted by the Company to the Union. The only substantive change in such prerogative clause now submitted by the Union to the Company was that it continued to provide for arbitration of the Company's decisions on matters covered by such Article.

In the meantime, a Complaint and Notice of Hearing on the Charge which had been filed by the Union against the Company in January was by the Board's Fort Worth Regional Office issued June 30, 1949, setting such Hearing before a Trial Examiner for July 26, 1949.

At the insistence of the Company, still another meeting was held between it and the Union's committee as late as July 25, 1949, the day before the commencement of the Hearing before the Trial Examiner. At that meeting it developed that only the following substantial points of disagreement still existed between the Company and the Union as to a contract between them:

1. Whether or not such contract should provide for 5, 6 or 7 paid holidays per year, and if 6, whether or not the sixth paid holiday should consist of two split half-holidays.

2. Whether or not the Company must agree to the inclusion in such contract of a provision for review by arbitration of the decisions of top company management in respect to the matters set forth as functions and prerogatives of management.

3. Whether or not any changes should be made in Article XII headed "Strikes and Lockouts" to meet the Union's objections to the refusal of the Company to provide in the contract for review by arbitration of such decisions, and if so, what changes or modifications.

4. What increases in rates of pay, if any, would the Company agree to.

This then, was the posture of the parties at the opening of the Hearing before the Trial Examiner and it continued to remain the same throughout such Hearing and until the filing by the Trial Examiner of his Intermediate Report on October 11, 1949.

The Company, the General Counsel and Messrs. Woll, Glenn and Thatcher, attorneys for the American Federation of Labor on behalf of the Union, all filed exceptions to the Intermediate Report. It seems to us conspicuous and revealing that such attorneys for the Union, faced with the specific findings of the Trial Examiner that, "There is no doubt that Respondent here had a right to insist upon the inclusion of the prerogative clause in any contract. I find contrary to the contention of General Counsel and the Union, that clause does not fail to accord to the Union the status secured to it by certification. Respondent had a right to insist that its decisions in regard to hire and tenure of employment be not reviewable by arbitration. It had a right to refuse to agree to an increase in wages, to the designation of additional paid holidays, or to the granting of other conditions of employment more favorable than those then existing. Assuming, but of course not deciding, that Respondent's employees were ill-paid and that Respondent could well afford to grant a wage increase, it was under no legal compulsion to do so. True, the Act recognizes (Sec. 1)

that inequality of bargaining power existing between unorganized employees and organized employers burdens commerce, but in ameliorating this condition, the Act protects employees in their right to self-organization only. Economic strength is still the underlying touchstone of success at the bargaining table," saw fit not to challenge such findings in any manner whatsoever (Vol. I, R. page 60). We are of the opinion that the reason such attorneys did not do so is because they found themselves, of necessity, in agreement with the Trial Examiner, just as did the Chief Judge of the Court of Appeals below who incorporated such exact language into a footnote to his opinion and specifically found that the law was correctly stated therein.

After the Intermediate Report was filed, nothing more was heard from the Union by way of request for further negotiation until the Company requested additional meetings which were resumed early in January, 1950. These last meetings were two in number. At the first, the Company proposed an increase in wages which was accepted by the Union, and the Union made the proposal (appearing as Article IV of the Contract headed "Promotions and Demotions", which proposal of the Union the Company promptly accepted. The remaining trivial difference as to holidays was quickly ironed out, the duration of the contract agreed upon and complete accord as between the parties reached. At the second of such meeting, held January 13, 1950, such agreement, having been reduced to writing, was executed and it was agreed that a copy of same should be furnished each of the Company's employees within the bargaining unit, under cover letter signed by both the Company and the Union. This letter did go out, accompanied by a copy of the executed contract to each of such employees, and the Company, and the Union, and such Employees have been living together quite harmoniously since

such time under the terms of such contract as well as under the terms of the subsequently negotiated contract which is now in existence.

The Company and the Union being of the opinion that such developments should be of interest to and should be made known to the Board, the Company's attorneys then undertook to enter into a stipulation as to same with Messrs. Woll, Glenn and Thatcher for presentation to the Board for its consideration. Instead of agreeing to any stipulation, however, such attorneys took violent exception to the contract which had been negotiated and signed by their client, as well as to the "type of bargaining" which had produced same. Their letter of February 10, 1950, addressed to the Board appearing at page 62 (R. Vol. I.) characterizes the agreement as "hardly a model one" and insists that "it was entered into only because the course of conduct engaged in by the Company made it obvious that there had to be either this agreement or nothing, and so, in an effort to preserve the very existence of the Union, the contract was reluctantly signed". The last of such attorneys' observations above quoted is, of course, wholly without factual support in the record or elsewhere. They either did not know, or deliberately chose to ignore, the fact that the most objectionable part of the contract to them, being Article IV, Promotions and Demotions, was their client's own proposal. As to their observation that the agreement is "hardly a model one" we can not help wondering as to whether or not the underlying premise prompting such a remark is that any agreement, in order to be acceptable to them, must be a "model one" from the standpoint of the Union.

Upon receipt of a copy of such letter from the attorneys for the Union, the Company's attorneys filed with the Board under date of February 15th, 1950, the Motion appearing at page 63, Vol. I, T. of R. Thereupon the record

before the Board was complete as to the bargaining negotiations between the parties, and as to the contract that had been executed between them, in culmination of such bargaining. Nevertheless, and in complete disregard of the accomplishment between the parties of the end result contemplated and intended by the Act, the Board, on April 5, 1950, rendered its final Decision and Order appearing beginning page 85, Vol. I, T. of R., to which the Company's Petition for Review filed in the Court of Appeals below was directed.

## Summary of Argument

### I.

Upon the hereinbefore summarized record before it, the Court of Appeals below, after having observed that the Company's "whole complaint is directed, its whole effort" at relief is confined, to setting aside as unfounded in law Paragraph I (a) of the Order and the Board's Finding and Conclusion that Petitioner had and has no right to insist upon the prerogative clause of the contract on the ground that, on the record viewed as a whole, the Board's Finding and Conclusion upon which this Order rests is not supported by substantial evidence and is not a lawful Order and that it may not be enforced, but must be set aside and vacated," specifically agreed with the Company, "that the provisions of the contract assailed by the Board are not illegal or in anywise forbidden or prohibited; that Petitioner had a right to urge and insist upon them; and that the evidence viewed as a whole does not (except for certain unilateral action taken) show any refusal of the Petitioner to engage in collective bargaining as that term is defined in the Act and in the decisions of the Courts."

Such Court further specifically stated that it was of the

opinion that the law is correctly stated in the quotation from the Trial Examiner's Intermediate Report set out in note 3 to the Court's opinion and hereinbefore quoted on page 23 and that the Company was not guilty of refusing to bargain in insisting on the prerogative clause.

The Court further specifically found that "the enforcement of Paragraph I (a) should be denied as unfounded *in law and in fact.*" (Emphasis supplied.)

The attorneys for the Board in their Brief and Motion for Rehearing addressed to the Court of Appeals below, as well as in their Petition for Certiorari and Brief on the merits filed in this Court, have consistently admitted that "the provisions of the contract assailed by the Board are not illegal or in anywise forbidden or prohibited."<sup>2</sup>

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<sup>2</sup> The following excerpts from such brief and Motion for Rehearing below and the Petition for Certiorari and Brief on the merits filed herein are relied upon for the foregoing observations.

1. "Finally, petitioner claims that the Board's order herein invalidates its current contract with the Union, without specifying the 'particular offensive provision' and thus leaves petitioner in a dilemma as to the negotiation of future contracts. The alleged dilemma, we submit, is altogether fictitious. Nothing in either the Board's decision or its order invalidates petitioner's current contract with the Union or any provision in it. Petitioner's conduct, which the Board found unlawful, related to the means adopted by petitioner to restrict the Union's bargaining rights during the contract negotiations, rather than the inclusion in a contract of a provision which was in itself unlawful.

"The Board's order is plainly directed, not against a restrictive prerogative clause as such, but against repetition of petitioner's 'insisting as a condition of agreement, that the said Union agree to (such) a provision. \* \* \* Nothing in the decision or order restricts the right of petitioner and the Union, through good faith bargaining, to reach an agreement that such a provision should be included in a future contract.

"Such an agreement by the Union would mean simply that the Union had waived, for the specified period of the contract, its statutory right to bargain about the bilateral establishment of the con-

Thus it stands undisputed and unassailed before this Court that the prerogative clause in question is a wholly legal one, not in any manner forbidden or prohibited, as to the inclusion of which in its contract with the Union the Company had a complete and lawful right to insist upon. If so, the Company can not in law be held to have been in violation of the Act by having so insisted.

## II.

The Court below has further found as a matter of fact upon its review of the record viewed as a whole, that there

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ditions of employment covered by the prerogative clause." (Brief of the Board before the Court below, bottom of page 31, et seq.)

2. "In short, petitioner would reduce the case to the simple question of whether there was good faith bargaining as to the inclusion of an arbitration provision in the prerogative clause. Petitioner argues that an impasse was reached on the matter and then goes to some lengths to show that, under the Act, it may not be compelled to agree to subject its determinations to review by arbitration. Needless to say, we fully agree with the latter proposition." (Board's Brief before the Court of Appeals below, page 15.)

3 "And, if, in the instant case, petitioner had negotiated with the Union in good faith with respect to the matters mentioned above, and had found that, despite full consideration of their respective positions, the parties could not reach agreement upon any or all of the matters, then the parties would have reached a legitimate impasse, and petitioner's obligation to bargain with respect to those particular terms and conditions of employment would have been satisfied." (Board's brief before the Court of Appeals below, page 34.)

4 "Although it is recognized that the Union could have voluntarily agreed to surrender its right to bargain on these matters, the Board concluded that the company's conditioning of any contract at all on the Union's surrender of its statutory right to bargain about these particular subjects constituted bad faith bargaining, and also that it constituted, quite apart from the element of bad faith, a per se violation of Section 8(a) (1) and (5) of the Act." (Petition of the Board for Rehearing filed in the Court of Appeals below, page 2.)

is no "support in the evidence for the view that the employer, in insisting upon the prerogative clause, was any less in good faith than the Union was in resisting its inclusion," and has likewise found that "it was not, therefore, as the Board finds, the steadfastness of the employer alone in insisting on its point. It was the steadfastness of the employer and the Union—the one in proposing, the other in opposing a clause of this kind, which the employer felt it ought and the Union felt it ought not to have, which prolonged the negotiations. It was not any general unwillingness on the part of the Petitioner to negotiate a contract satisfactory to itself as well as to the Union."

This controlling fact question having been by the Court

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5 "This Court appears to have regarded the company's clause itself as if it were an ordinary subject of collective bargaining such as wages, hours, and other conditions of employment. Accordingly, the Court concluded that it was just as fair and reasonable, under the Act, for the company to insist upon including the clause in any contract as it was for the Union to refuse to do so. In effect, the Court considered that the parties reached a legitimate impasse on the issue." (Board's Petition for Rehearing, page 2.)

6. "The Board's view does not imply, of course, that a labor organization may not lawfully agree for the duration of a contract to waive its right to bargain concerning particular subjects in the area of wages, hours, and working conditions. Nor does it mean that an employer may not lawfully request the Union to agree to such a provision. \* \* \* " (Page 16, Petition for Writ of Certiorari.)

7. The fact (is) that the union could voluntarily have waived its right to bargain about shift schedules and other matters covered by the prerogative clause, and that such a voluntary waiver would have been recognized as valid \* \* \* ". (Page 18, Brief on the Merits.)

8. " \* \* \* the 'prerogative' clause upon which respondent insisted could have been incorporated in the collective bargaining contract by lawful means. \* \* \* " (Page 51, Brief on the Merits.)

9. "It follows that an employer may lawfully in the course of negotiations propose that the union waive a portion of its bargaining rights, \* \* \* " (Page 55, Brief on the Merits.)

of Appeals below so determined upon the substantiality of the record viewed as a whole in favor of the petitioning Company and contrary to the finding of the Board, such determination is entitled to affirmance by this Court upon the specific authority and holdings of this Court in *UNIVERSAL CAMERA CORPORATION V. NATIONAL LABOR RELATIONS BOARD*, 340 U.S. 474, 71 Sup. Ct. 456, and *NATIONAL LABOR RELATIONS BOARD V. PITTSBURGH STEAMSHIP CO.*, 340 U.S. 498, 71 Sup. Ct. 453, both decided February 26, 1951.

### III.

The Court of Appeals below upon its review of the substantiality of the record viewed as a whole, as required of it by the decisions above cited, was amply justified and completely correct in holding that such record, so viewed, does not show "any refusal of the Petitioner to engage in collective bargaining as that term is defined in the Act and in the decisions of the Courts," and in also finding that "the Union continued throughout to be as vigorously opposed to any clause of that kind as the employer was in favor of it. It was not, therefore, as the Board finds, the steadfastness of the employer alone in insisting on its point. It was the steadfastness of the employer and the Union—the one in proposing, the other in opposing a clause of this kind, which the employer felt it ought and the Union felt it ought not to have, which prolonged the negotiations. It was not any general unwillingness on the part of the Petitioner to negotiate a contract satisfactory to itself as well as the Union," and in concluding its Opinion with the finding that "in insisting on the prerogative clause the Company was not guilty of refusing to bargain."

## Argument

### I.

We direct our attention first to the question of law presented as to whether or not the prerogative clause assailed by the Board is, in and of itself, illegal or in anywise forbidden or prohibited.

In its Opinion, the Court of Appeals below has the following to say:

"Before the enactment of the National Labor Relations Act, as amended, there was, despite the decisions of the Courts to the contrary, some understandable confusion as to what 'collective bargaining' required of employers. This was due to the persistence of the Board in asserting and pressing its view that the use in the National Labor Relations Act of the words 'collective bargaining' meant that the employer had to agree to terms proposed by the Union, if, in the opinion of the Board, these terms were reasonable and that a failure to agree to such terms was a basis for a finding that the employer was not bargaining in good faith. Since, however, that term has been defined in the National Labor Relations Act as amended, 29 USCA Sec. 158(d), there is no longer any basis for differences of opinion as to what it means, or for Board Orders in effect requiring the employer to contract in a certain way."

One of the earliest "decisions of the Courts to the contrary" was NATIONAL LABOR RELATIONS BOARD V. JONES & LAUGHLIN STEEL CORPORATION, 301 U.S. 1, decided April 12, 1937, the pertinent language in which has been heretofore set forth in Note 1, appearing page 5.

Thereafter, in 1943, MR. JUSTICE JACKSON, speaking for a unanimous Court in TERMINAL RAILWAY ASSOCIATION

OF ST. LOUIS V. BROTHERHOOD OF RAILROAD TRAINMEN,  
318 U.S. 1, at page 6, had the following to say:

"The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours, or working conditions. Instead, it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those acts is not primarily in the working conditions as such. So far as the act itself is concerned, these conditions may be as bad as the employees will tolerate, or be made as good as they can bargain for. *The Act does not fix, and does not authorize anyone to fix, generally, applicable standards for working conditions.*" (Emphasis supplied.)

In NATIONAL LABOR RELATIONS BOARD V. BELL OIL & GAS CO., (5th Cir.) 91 F. 2d 509, the Court said:

"The act does not compel agreements between employers and employees. It does not compel any agreement whatever.' Jones & Laughlin Steel Corporation, supra, 57 S. Ct. 615, 628, 81 L. Ed.—108 A.L.R. 1352. 'The act does not, interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion.' Id., 57 S. Ct. 615, 628, 81 L. Ed.—, 108 A.L.R. 1352.

"To which may be added that the act does not authorize the imposition of penalties, or the making of unreasonable requirements by the Board. Agwelines v. National Labor Relations Board (5th Cir.) 87 F. 2d 146."

In *NATIONAL LABOR RELATIONS BOARD v. P. LORILLARD Co.*, (6th Cir.) 117 F. 2d 921, the Court said:

"The Board is not authorized, by statute or court decision, to shape or control the course of the negotiations between employer and employee, so long as the employer bargains collectively, in accordance with the statute. The purpose of the statute is to guarantee to the employees absolute freedom of choice as to their representatives, and that freedom should not be controlled or influenced either by the employer, or by any expression or form of order coming from the Board. Cf. *Hamilton-Brown Shoe Co. v. National Labor Relations Board*, 8 Cir., 104 F. 2d 49, 54. The Act nowhere attempts to define what agreement shall be offered by the employer or by the union in the bargaining. In fact, as pointed out by the Supreme Court, 'The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer "from refusing to make a collective contract and hiring individuals on whatever terms" the employer "may by unilateral action determin." ' *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45, 57 S. Ct. 615, 628, 81 L. Ed. 893, 108 A.L.R. 1352; *National Labor Relations Board v. Sands Mfg. Co.*, 6 Cir., 96 F. 2d 721, 724, affirmed 306 U.S. 332, 59 S. Ct. 508, 83 L. Ed. 682; *National Labor Relations Board v. Sunshine Mining Co.*, 9 Cir., 110 F. 2d 780. *But if the employer is free to contract or to refuse to contract at will, he is likewise free frankly to state the terms upon which he may yield and those upon which he will not yield.* Collective bargaining requires negotiations by the employer with representatives of the employees, chosen by themselves, freely and without coercion, and has no reference to the terms of the agreement offered so long as the parties negotiate in good faith with the view of reaching an agreement. Each party to the con-

troversy will necessarily offer a unilateral draft of the agreement contemplated, and such action, though it results in shaping the terms finally agreed upon, is in no way illegal. The sincerity of the employer's effort in negotiating with a labor organization, under the statute is to be tested by the length of time involved in the negotiations and the persistence with which the employer offers opportunity for agreement. *National Labor Relations Board v. Sands Mfg. Co.*, supra; *National Labor Relations Board v. Sunshine Mining Co.*, supra. Applying this test, the record does not show that the respondent had a fixed resolve not to enter into an agreement with the union. Cf. *National Labor Relations Board v. Highland Park Mfg. Co.*, 4 Cir., 110 F. 2d 632. Here the respondent at no time refused to receive communications from the union, frequently stated that it would negotiate with the union, and over a period of a year sent numerous communications to the union, explaining its position upon questions affecting the wage scale, physical conditions of the factory, the checkoff, seniority rights, and other conditions of employment. It did not decline to enter into a written contract, (Cf. *National Labor Relations Board v. Sunshine Mining Co.*, supra, 110 F. 2d at page 787), but submitted a written contract. The evidence, without contradiction, shows a sincere attempt on the part of respondent to negotiate with the union, even though, as hereafter shown the respondent labored under the mistaken notion that these negotiations could be carried on by letter. *The Board erred in deciding that the respondent had refused to bargain when it stated in advance certain terms to which it would not accede.*" (Emphasis added.)

IN NATIONAL LABOR RELATIONS BOARD V. TOWER HOSIERY MILLS, (4th Cir.) 180 F. 2d 701, JUDGE DOBIE speaking for the Fourth Circuit has seen fit to assure negotiators that,

"The Courts under the Act will never compel an employer to accept a particular contract."

In NATIONAL LABOR RELATIONS BOARD V. WHITTIER MILLS (5th Cir.) 123 F. 2d 725, which opinion was rendered on a petition seeking a contempt order, the Court said:

"Instead of, as the petition claims, the record showing a deliberate and contemptuous refusal to bargain, it shows a painstaking and conciliatory effort on the part of the respondent to reach an agreement, and that the only reason that an agreement was not reached, was because certain things which respondents, in good faith, deemed were necessary to the agreement would not be agreed to by the union, and certain things which the union, also in good faith, deemed necessary to the agreement would not be agreed to by the respondents. In short, the bargaining went on the rocks because each bargainer was endeavoring to get into the agreement the things he wanted, and the union representatives lost patience. In such a situation, it cannot be said that the respondent, in violation of this court's order, refused to bargain. On the contrary, the record shows that the respondents never refused to negotiate but that after respondents refused the checkoff, the representatives of the union broke off the bargaining and refused to negotiate further though the respondents were willing and proposed to continue conferences.

"The law requires good faith bargaining with the purpose of reaching an agreement. It does not require that any particular form of agreement be reached. The respondents did not ask a single thing of the union that it could not, if it wanted to, have agreed to. The same thing is true of the demands the union made upon the respondents. It is not for us to determine whether the proposals of the union or those of the respondents would have been best for the employer and employee. It is sufficient for us to determine that respondents

have not, in contempt of this court's order, failed and refused to bargain. To sustain this petition and issue a contempt order under this record could mean only one thing, in effect, that the respondents were found in contempt for not agreeing to the checkoff, because it was upon this rock that the negotiations finally split. It was because of this that the union broke off and refused to continue negotiations. *The law does not authorize the Board or us to make collective bargaining contracts nor to prescribe what shall be written in them.* Neither we nor the Board can interfere in the negotiations as long as they are in good faith, going on." (Emphasis supplied.)

In NATIONAL LABOR RELATIONS BOARD V. ATHENS MFG. Co., (5th Cir.) 161 F. 2d 8, the majority opinion, rendered per curiam, holds that:

"The record leaves in no doubt that respondent was definitely opposed to granting certain demands the Union considered essential in an agreement, and that just as definitely the Union was determined to enforce these demands. If the record showed only this, that is, that respondent was as persistent in standing by what it considered essential in a fair agreement as the Union was in standing to its insistence on what it considered essential, we should, of course, be obliged to hold that this evidence would not support a finding that respondent had refused to bargain collectively."

In the same case, JUDGE WALLER, dissenting, had the following to say:

"I do not believe, and the majority does not hold, that it is given to the National Labor Relations Board, or to the Court, to say what the contract or agreement between the employer and the Union ought to have been, or to adjudge that the failure to maintain the

checkoff of dues, union security, vacation-with-pay and arbitration clauses are unfair labor practices. These things, under present legislation, are matters of negotiation and agreement between the parties, concerning which either party had a legal right to be adamant or contrary, and for the attainment of these objectives the Union had a legal right to strike.

*"Since under the law neither the Board, nor the Court, is authorized to determine what the contract between the respondent and the Union should provide, it seems necessarily to follow that neither the Board nor this Court has a right to impose sanctions upon the respondent for refusing to agree to the demands of the Union as to the things which should have been put in the contract. Whether the Union was justified in striking or whether the respondent was justified in refusing to agree to the Union's demands are not justiciable issues here. In the absence of a right to decide the question was should only refer it back to the instrumentality of collective bargaining which we can, and should, order to be undertaken in good faith."* (Emphasis supplied.)

In *FARMERS GRAIN COMPANY v. TOLEDO P & W R.R.* (7th Cir.) 148 F. 2d 109, the Court said:

"The court found that the parties did not bargain or negotiate in good faith, and that their failure to agree was the result of the unreasonable and obstinate attitudes of all defendants and their refusal to make concessions. At the close of the trial, however, he said: 'I know that there is an honest disagreement on the part of the management of the railroad company and perhaps an honest—and I know an honest disagreement on the part of the employees of the Brotherhood.' Of course, this statement of the court would not of itself annul its findings of lack of good faith in negotiating and bargaining, but it conclusively shows that

the finding is based solely on the fact that the parties did not reach an agreement, which under the law does not constitute a proper basis for such finding. \* \* \* The law does not require the Brotherhoods or the appellant to enter into an agreement which is not mutually satisfactory. *Virginian Railway Co. v. System Federation* 300 U.S. 515, 57 S. Ct. 592, 81 L. Ed. 789; *N.L.R.B. v. Jones & Laughlin Steel Corp.* 301 U.S. 1, 57 S. Ct. 615, 81 L. Ed 893, 108 A.L.R. 1352."

And, on the somewhat narrower proposition as to whether or not either party to a negotiation may lawfully be required to agree to arbitration, this Court, in construing the arbitration provisions of the Railway Labor Act (entirely consistent in such respect with the National Labor Relations Act) in light of the Norris-LaGuardia Act, has said in *BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE NO. 27, ET AL. v. TOLEDO P & W R.R.*, 321 U.S. 50,

"Respondent's final contention, in this phase of the case, is the most insistent. It is that if 'voluntary arbitration,' as the term is used in Section 8, encompasses arbitration under the Railway Labor Act, by that fact the arbitration ceases to be 'voluntary' and the latter Act's requirement that it be so is violated. In short, it is said the effect is to force respondent to submit to compulsory arbitration.

"Without question, as respondent says, arbitration under the Railway Labor Act is voluntary. Section 7, First, requires the machinery to be put in motion by agreement of the parties. A proviso also declares, 'That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.' 45 U.S.C. par. 157, First, 45 U.S.C.A. Par. 157, subd. 1. It is clear, therefore, that the Railway Labor Act's purpose is not

to impose upon the parties a legal duty to arbitrate, enforceable as is the duty to bargain collectively imposed by Section 2, Ninth, discussed above. And if the effect of bringing that form of arbitration within the mandate of Section 8 of the Norris-LaGuardia Act were to create such a duty, so enforceable, respondent's contention would be more in point. But it does not do that. And the contention that it does entirely misconceives the effect of Section 7, First, of the Railway Labor Act, and confuses 'violation' of its terms with failure to comply with those of Section 8 of the Norris-LaGuardia Act. The proviso of Section 7, First, and the requirement of submission by agreement were in force substantially in their present form under the Railway Labor Act of 1926. 44 Stat. 582. It was exactly in the light of these provisions and with the intent, as has been shown, to make it include arbitration under the Railway Labor Act that Section 8 used the term 'voluntary arbitration'. Obviously that was no purpose in doing so to contradict the terms of both statutes and label 'voluntary' what in fact is compulsory. Nor was this the effect. Section 7, First, merely provides that failure to arbitrate shall not be construed as a violation of any legal obligation imposed upon the party failing by that Act or otherwise. Respondent's failure or refusal to arbitrate has not violated any obligation imposed upon it, whether by the Railway Labor Act or by the Norris-LaGuardia Act. No one has recourse against it by any legal means on account of this failure. Respondent is free to arbitrate or not, as it chooses. But if it refuses, it loses the legal right to have an injunction issued by a federal court or, to put the matter more accurately, it fails to perfect the right to such relief. This is not compulsory arbitration. It is compulsory choice between the right to decline arbitration and the right to have the aid of equity in a federal court."

After submission of this case to the Court of Appeals

below, this Court as recently as February 26, 1951, in *AMALGAMATED ASSOCIATION OF STREET, ELECTRICAL RAILWAY AND MOTOR COACH OF AMERICA, DIVISION 998, ET AL. V. WISCONSIN EMPLOYMENT RELATIONS BOARD*, 340 U.S. 383, said the following in respect to compulsory arbitration.

"In summary, the act substitutes arbitration upon order of the Board for collective bargaining whenever an impasse is reached in the bargaining process. And, to insure conformity with the statutory scheme, Wisconsin denies to utility employees the right to strike.

" \* \* \* We deal only with the question of conflicting federal legislation as we have found that issue dispositive of both cases.

" \* \* \*

"Upon review of these federal legislative provisions, we held, 339 U.S. at page 457, 70 S. Ct. at page 783:

'None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation. *Plankinton Packing Co. v. Wisconsin Board*, 1950, 338 U.S. 953, 70 S. Ct. 491; *LaCrosse Telephone Corp. v. Wisconsin Board*, 1949, 336 U.S. 18, 69 S. Ct. 379 (93 L. Ed. 463); *Bethlehem Steel Co. v. New York Labor Board*, 1947, 330 U.S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234; *Hill v. State of Florida ex rel. Watson*, 1945, 325 U.S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782.'

" \* \* \*

"In any event, congressional imposition of certain restrictions on petitioners' right to strike, far from supporting the Wisconsin Act, shows that Congress has closed to state regulation the field of peaceful strikes in industries affecting commerce. *United Auto Workers v. O'Brien*, supra, 339 U.S. at page 457, 70 S. Ct. at page 782. And where, as here, the state seeks to deny

entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law.

"Like the majority strike-vote provision considered in O'Brien, a proposal that the right to strike be denied, together with the substitution of compulsory arbitration in cases of 'public emergencies,' local or national, was before Congress in 1947. This proposal, closely resembling the pattern of the Wisconsin Act, was rejected by Congress as being inconsistent with its policy in respect to enterprises covered by the Federal Act, and not because of any desire to leave the states free to adopt it.

"The utility companies, the State of Wisconsin and other states as *amici* stress the importance of gas and transit service to the local community and urge that predominately local problems are best left to local governmental authority for solution. On the other hand, petitioners and the National Labor Relations Board, as *amicus*, argue that prohibition of strikes with reliance upon compulsory arbitration for ultimate solution of labor disputes destroys the free collective bargaining declared by Congress to be the bulwark of the national labor policy. This, it is said, leads to more labor unrest and disruption of service than is now experienced under a system of free collective bargaining accompanied by the right to strike. The very nature of the debatable policy questions raised by these contentions convinces us that they cannot properly be resolved by the Court. In our view, these questions are for legislative determination and have been resolved by Congress adversely to respondents.

"When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-

federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in *Bethlehem Steel Co. v. New York Labor Board*, 1947, 330 U.S. 767, 67 S. Ct. 1025, 91 L. Ed. 1234, and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation."

The attorneys for the Board in their Petition for Certiorari (page 13) as well as in their Brief on the merits filed herein (pages 16 and 41) have seen fit to refer to the foregoing case apparently because it cites the Board's opinion in the instant case (89 N.L.R.B. 185), as authority for the proposition that problems of work scheduling and shift assignments have been held to be appropriate subjects for collective bargaining under the Federal Act. Far from supporting the Board's contention that the Company has been guilty of refusing to bargain collectively in this case, it seems to us that the net holding of such case simply is that, because the state of Wisconsin undertook by legislation to require compulsory arbitration in lieu of continued collective bargaining, such legislation must be stricken down as unconstitutional because in conflict with the Federal Labor Management Relations Act which neither requires nor permits anyone else to require arbitration as a substitute for collective bargaining. We especially wish to recall this Court's attention to the fact that the Board appeared before it in such case as *amicus*

urging that compulsory arbitration is contrary to the national labor policy as found in the Act.

If the sovereign State of Wisconsin cannot by legislative enactment require arbitration between employer and employee, how then can the Union in this isolated negotiation have required it?

Again, we ask the understanding and indulgence of this Court of our use of the personal in the preparation of this Brief. As the actual negotiators charged from the beginning with the handling of the Company's obligations in respect to its contract negotiation with the Union, we were familiar with the principles of law laid down in the above noted authorities, as well as with the embodiment by Congress of the legal concepts of such decisions in the 1947 amendments to the Act as Sec. 8(d) thereof. We thought we knew why Congress had so amended the Act. This reason we thought to be as expressed by the attorneys for the Board on page 49 of their Brief, as follows:

"The legislative history of Sec. 8(d) shows that incorporation of the proviso in the amended act was impelled by what Congress believed was the Board's practice in some cases of regarding an employer's failure or refusal to make economic concessions in the course of negotiations as an indication of bad faith."

We were thus in the beginning faced with the necessity of deciding for ourselves whether or not such legal principles and their embodiment as Sec. 8(d) of the Act could now be considered and used as practical guides for our assistance and protection in our negotiations then starting with the Union, or, on the other hand, still would be considered by the Board as mere theory and philosophy by which we must not be guided in such negotiations, except at the risk of Board displeasure and punitive action. We concluded that

such legal principles were intended to be and actually now constituted practical rules for negotiation in which the Board, after the enactment of Sec. 8(d) of the Act would, at least, acquiesce, and we proceeded to govern ourselves accordingly.

Specifically, under the holding of the P. LORILLARD COMPANY case, 117 F. 2d 921, ("But, if the employer is free to contract or refuse to contract at will, he is likewise free frankly to state the terms upon which he may yield and those upon which he will not yield. Collective bargaining requires negotiation by the employer with representatives of the employees chosen by themselves freely and without coercion and has no reference to the terms of the agreement offered, so long as the parties negotiate in good faith with the view of reaching an agreement. Each party to the controversy will necessarily offer a unilateral draft of the agreement contemplated and such action, though it result in shaping the terms finally agreed upon, is in no way illegal.

\* \* \* The Board erred in deciding that the respondent had refused to bargain when it stated in advance certain terms to which it would not accede,") we felt that we had a right to frankly state to the Union the terms as to arbitration upon which the Company would not yield. We likewise felt, under the holding of this Court in BROTHERHOOD OF RAILROAD TRAINMEN, ENTERPRISE LODGE 27, ET AL., V. TOLEDO P. & W. R. R., 321 U.S. 50, that the Union, under the Act, could not require the Company to agree in the contract to mandatory arbitration of the decisions of the Company made pursuant to the normal and customary functions of management. And so we then told the Union as early as January 10, 1949, what the views of the Company were on arbitration against arbitration which the Company felt it needed to have in the contract. Almost immediately thereupon the full damage ultimately found by the Board

accrued because the Company's proposals as to arbitration at that time made to the Union were immediately met with an adamant refusal of acceptance on the part of the Union as expressed by Mr. Stafford in his statement that the Union could never agree, even if they were given \$500.00 a month increase. \*

From then on until the actual signing of the contract, the only thing that hampered and delayed final agreement between the parties was this refusal of the Union to agree with the Company as to arbitration. We did not then, nor have we ever for a moment, doubted or questioned the right of the Union to refuse to so agree with us. All we then thought and all we have ever thought was and is that under the law, we too must have a corresponding, correlated right to refuse to agree with them.

The Board's attorneys in their brief to the Court below, as well as in their brief to this Court, have attempted by sheer reiteration, ad infinitum, of their Charge that the Company's attitude of intransigence constituted the sole stumbling block in the way of agreement between the parties to establish such Charge as a fact in this case. Nothing could be further from the fact. The Union in the beginning placed upon the bargaining table a proposal for arbitration which would have required, amongst other things, the final determination thereby of all promotions and demotions. The Company, being unwilling to concede to such requirement, then placed upon the bargaining table a counterproposal to the effect that there should be no arbitration of its decisions as to matters which it proposed should be recognized and ceded by the Union to the Company as proper functions of management. Between these two proposals there was and remained an obviously unbridgeable gap. Agreement between the parties then became and remained dependent upon the one side or the other receding from its position and conced-

ing to the opposing side. Again, relying on Sec. 8(d), we felt that we had the right to refuse to make such concession, and we so refused. All that happened or failed to happen thereafter was merely the result of actual deadlock between the Company and the Union which then matured and remained in existence. The Company, however, has been found by the Board to have been the sole cause of the delay in reaching agreement, resulting from such deadlock. The Union apparently, in the eyes of the Board, and certainly in the eyes of its attorneys, is to be completely absolved from any responsibility therefor.

If ever there was legislation designed and intended to control practical relations and dealings between contracting parties, it is the Act. Certainly under the Act, as the Board's attorneys have consistently admitted, there was a lawful way in which the Company could have sought from the Union agreement to the inclusion of its concept of arbitration in the contract between them. If we in handling the Company's negotiations with the Union have run afoul of the legal requirements of the Act, as claimed by the Board's attorneys, this must be so because we were unable to find or recognize the lawful means which they agree do exist, and if this be so, such lawful means could and would have been found by negotiators other than ourselves. Possibly the attorneys for the Board, had they been in our position as negotiators, would have known what such lawful means were, and would have utilized them. But this, of necessity, means that they must now know what such lawful means would have been and, if they know, they can most certainly now tell this Court and us just what they would have done to stay within their concept of the lawful requirements of the Act. Accordingly, we respectfully suggest to such attorneys that they do so in their presentation of this matter to this Court. Let them envision themselves in the position

in which we found ourselves as negotiators in these contract negotiations, and advise this Court and us just what lawful means they would have then employed to secure agreement with the Union, and, at the same time, protect and safeguard the right of the Company to refuse to accept in the contract the Union's concept or arbitration.

We asked this same thing of the Board's attorney who argued this case to the Court of Appeals below. It must have been that he could not do so, because he certainly made no effort to do so in such presentation. We think the reason for his failure is that he realized that had he been in our position, he would, of necessity, have conducted himself in his negotiations in the same manner as we did. Yet the Board's attorney continues to say that had he done so, he would have violated Sec. 8(a) (1) and (5) of the Act by refusing to bargain collectively in good faith with the Union.

## II.

In any event, it seems fundamental that in order for the arguments contained in the Board's brief to have any cogency, or force, it is necessary that the assumed facts of the Company's capability in the matter upon which they are based must actually exist. The Court of Appeals below, upon its review of the substantiality of the record viewed as a whole, has found that such facts do not exist. We, therefore, respectfully urge that the position taken by the Board's attorneys comes squarely within the impact of the *UNIVERSAL CAMERA CORPORATION* and *PITTSBURGH STEAMSHIP COMPANY* cases, although such attorneys have completely failed to take notice of either.

In *UNIVERSAL CAMERA CORPORATION v. NATIONAL LABOR RELATIONS BOARD*, 340 U.S. 474, 71 S. Ct. 456, decided February 26, 1951, after submission of this case below, this Court has said:

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"From the legislative story we have summarized, two concrete conclusions do emerge. One is the identity of aim of the Administrative Procedure Act and the Taft-Hartley Act regarding the proof with which the Labor Board must support a decision. The other is that now Congress has left no room for doubt as to the kind of scrutiny which a court of appeals must give the record before the Board to satisfy itself that the Board's order rests on adequate proof.

"It would be mischievous word-playing to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. The Senate Committee which reported the review clause of the Taft-Hartley Act expressly indicated that the two standards were to conform in this regard, and the wording of the two Acts is for purposes of judicial administration identical. And so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act.

"Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record. Committee reports and the adoption in the Administrative Procedure Act of the minority views of the Attorney General's Committee demonstrate that to enjoin such a duty on the reviewing court was one of the important purposes of the movement which eventuated in that enactment.

" \* \* \*

" \* \* \* We should fail in our duty to effectuate the will of Congress if we denied recognition to expressed Congressional disapproval of the finality accorded to Labor Board findings by some decisions of this and lower courts, or even of the atmosphere which may have favored those decisions.

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both.

" \* \* \*

"Our power to review the correctness of application of the present standard ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeal. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied."

Also in *NATIONAL LABOR RELATIONS BOARD v. PITTSBURGH STEAMSHIP CO.*, 340 U.S. 498, 71 S. Ct. 453, decided the same day, this Court has said:

"Were we called upon to pass on the Board's conclusions in the first instance or to make an independent review of the review by the Court of Appeals, we might well support the Board's conclusion and reject that of the court below. But Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting or denying enforcement of Labor Board orders. 'The jurisdiction of the court (of appeals) shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review \* \* \* by the Supreme Court of the United States upon writ of certiorari \* \* \*.' Taft-Hartley Act, Par. 10(e), 61 Stat. 148, 29 U.S.C. (Supp. III) par. 160 (e), 29 U.S.C.A. Par. 160 (e). Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.' *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 493, 43 S. Ct. 422, 423, 67 L. Ed. 712; Revised Rules of the Supreme Court of the United States, Rule 38, subd. 5, 28 U.S.C.A. The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite re-

view by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under the new dispensation finds the Board's order unsubstantiated. In such situation we should 'adhere to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations.' *Federal Trade Comm'n. v. American Tobacco Co.*, 274 U.S. 543, 47 S. Ct. 663, 71 L. Ed. 1193."

Perhaps then, the most important question here presented is whether or not this Court is prepared to find that this is one of the "rare instances where the standard appears to have been misapprehended or grossly applied" by the Court of Appeals below, or prepared to now decide contrary to its holding in the *PITTSBURGH STEAMSHIP COMPANY* case that this Court, rather than the Court of Appeals below, is the proper place to review a conflict of evidence and to reverse such Court below because this Court, had it been in the place of such Court below, would have found the record tilting in the opposite direction, although fair-minded judges could find it tilting either way.

The decision in this case is not "of importance to the public" but is rather of importance only to the opposing parties herein because it necessarily depends upon determination of the fact question of whether or not the Company did condition its entire negotiation with the Union, as well as its execution of any contract, upon the Union's prior acceptance of the Company's entirely lawful concept of arbitration in such contract. This is what the Board's attorneys assert to this Court happened, and this is what they very obviously desire this Court to tell the Company it may not again do in its future negotiations with the Union. The final decision in this case will govern only future negotiations between the

Company and the Union. It will not govern, generally, negotiations between other employers and employees for the reason that the facts of such other negotiations will, of necessity, be different from the facts of this one.

Nor is there here present "a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." The Board, in its Petition for Certiorari, asserted the existence of such conflict between the opinion of the Court of Appeals below in the instant case and the opinions in *MCQUAY-NORRIS MFG. CO. v. NATIONAL LABOR RELATIONS BOARD*, (7th Cir.) 116 F. 2d 748; *HARTSELL MILLS v. NATIONAL LABOR RELATIONS BOARD* (4th Cir.) 111 F. 2d 291; *NATIONAL LABOR RELATIONS BOARD v. REED & PRINCE MFG. CO.*, (1st Cir.) 118 F. 2d 874; and *RICHFIELD OIL CORPORATION v. NATIONAL LABOR RELATIONS BOARD*, (9th Cir.) 143 F. 2d 860.

We must confess ourselves unable to find any such conflicts.

The specific determination in the *MCQUAY-NORRIS MFG. CO.* case, *supra*, was that the employer refused to grant full recognition to the Union as the sole and exclusive bargaining agent for all of its employees, but, instead, actually bargained with the Union solely as the representative of only such of its employees as were members of the Union. The Court said,

"We, therefore, conclude that Petitioner refused to grant recognition as the Act commands, and that its refusal constitutes an unfair labor practice as charged in the Complaint and found by the Board."

The specific determination in the *HARTSELL MILLS* case, *supra*, likewise has to do with recognition. There the Court said,

"There was evidence that Petitioner took the position in dealing with the Union that it would recognize the right of the Union to represent only employees who were members of that organization and no other. This was not in compliance with the Act, Sec. 9(a) of which provides that an organization representing a majority shall bargain for all of the employees."

In the REED & PRINCE MFG. CO. case, supra, the specific determination was that the employer violated the Act by refusing to continue to negotiate with the Union after the occurrence and during the existence of a strike by the Union. The Court, after having specifically noticed that the Board had not held the employer guilty of any unfair labor practice prior to the actual initiation of the strike, found that,

"The Act expressly leaves the right to strike unaffected and any remedies the employees had were not destroyed by remaining on strike. If, after May 25th (upon which date the strike started) the respondent refused to bargain with the Union, it violated Section 8(5) of the Act and is subject to such orders of the Board as will effectuate the policies of the Act."

The Court further said:

"The strike not having been provoked by any antecedent unfair labor practice, the employer could have proceeded to fill the places of strikers with other men

\* \* \* The employer did not do this, however, but continued to treat the strikers as its employees and exerted itself to stampede the employees back to work

\* \* \* In these circumstances we find nothing in the Act which relieves the employer from the obligation to bargain collectively with its employees through their chosen representative."

In the **RICHFIELD OIL CORPORATION** case, *supra*, the specific determination was that the employer had violated the Act by refusing to permit access to its ships to the walking delegates of the Union for the purpose of talking to the crew members for which the Union was bargaining. The right to such access had been recognized by the employer in its prior contract with the Union, and the Board had held that such access to the principals for which it was negotiating was necessary in order to enable the Union to intelligently carry on such negotiations. The Court said,

"We do not find that there was any general attitude or conduct on the owner's part to violate the provisions of the Act. It was a mistake of law in its assumption that the right to such access and the passes facilitating it was one acquired by bargaining instead of the Act itself."

In none of such cases was there any question raised before the reviewing Court as to the correctness of the factual determinations upon which the Board had based its decision and order and in none of them did the reviewing Court in any manner question the correctness of such factual findings of the Board on review of the substantiality of the record viewed as a whole.

In the instant case, however, the entire factual basis upon which the Board's Decision and Order was grounded has been cut out from under it by the reviewing Court. Such factual basis must, of necessity, somehow be restored as the ground upon which the Board's finding in this case must stand if it is to be reinstated by reversal of the contrary fact findings of the Court of Appeals below.

Again, we say that reversal by this Court of the fact determinations of the reviewing Court below would necessitate substitution by this Court of its judgment for that

of the Court of Appeals below, which this Court, in the UNIVERSAL CAMERA CORPORATION case, *supra*, has said that it will do only in the "rare instance where the standard appears to have been misapprehended or grossly misapplied."

### III.

We now pass to some consideration of the substantiality of the record viewed as a whole upon which the Court of Appeals below has found contrary to the Board on the facts.

It is abundantly obvious that the Trial Examiner suspected the Company of being "anti-union". Upon what he based such suspicion we do not know, unless upon the wholly gratuitous and entirely groundless insinuations and innuendoes cast by counsel for the Board with which the record before him is replete. In his Intermediate Report he said:

"I am persuaded to the conclusion that respondent never sincerely intended to bargain with the Union, but, on the contrary was determined at the outset of negotiations to agree to nothing that would serve in any respect to enhance the Union's prestige or make it appear to the employees as an effective bargaining agency." (R. Vol. I, page 101.)

And further:

"I find that Respondent entered into its meetings determined not to reach agreement on any matter or terms which the Union could hold forth to the employees as an accomplishment; that by this conduct respondent expected to discredit the Union as a bargaining agent and to discourage others from 'digging down' into their pockets to join an organization which demonstrably had been unable to gain for employees any 'real advantage of value' ". (R. Vol. I, page 102.)

Upon what facts before him was he so persuaded or did he so find? Again we say, nothing but suspicion, and, possibly, the inevitable result then before him that because as yet there was no agreement between the Company and the Union, there was also no completed contract between them. We are persuaded that had such contract actually been signed, as it later was, at the time the Trial Examiner determined upon his Intermediate Report, he would have, of necessity, therein exonerated the Company from refusal to bargain collectively in good faith, and that an analysis of such Intermediate Report appended to the Board's Decision and Order and appearing beginning R. Vol. I, page 91, will inevitably lead to such conclusion. This because, while he therein correctly conceives and states the applicable principles of law, he nevertheless misapplies same to the factual situation before him, and ends up with an Intermediate Report that confounds and refutes its own conclusions, and, in the language of the Fifth Circuit Court of Appeals in *NATIONAL LABOR RELATIONS BOARD V. FULTON BAG AND COTTON MILLS*, 175 F. 2d 675, "deals not with resolving conflicts in testimony, but with assigning motives and reasons for actions taken on facts as to which there is no substantial conflict."

Nevertheless, the Board though rejecting the law, as found and applied by the Trial Examiner, did adopt his such unsubstantiated findings of fact. Wherefore, the Board's own Decision and Order remains itself based upon the suspicion which pervaded the Intermediate Report.

The true fact is that except for fair and rightful expression of its honest conviction that the Union was not for the best interest of its employees made before the election and its insistence upon its lawful bargaining rights thereafter, the Company has not evidenced any "anti-union" attitude whatever, but, on the contrary, has maintained and

ing 20 hours or more per week; Company will, upon proper showing from such employee, grant to such employee three (3) working days leave with pay on the basis of the number of hours each day regularly worked. Part-time employees, regularly working less than 20 hours per week shall have no benefits under this section.

## ARTICLE X.

### DISCRIMINATION AND UNION ACTIVITY

*Section 1:* The Company agrees that it will not interfere with, restrain, or coerce employees because of membership or lawful activity in the Union, nor will it, by discrimination in respect to hire, tenure of employment or any term or condition of employment, attempt to discourage membership in the Union.

*Section 2:* The Union agrees that neither the Union nor its members will intimidate or coerce the employees in respect to their right to work and will not attempt to force Union activity or membership on such employees. The Union further agrees that there shall be no solicitation of employees for Union membership on Company time. The Union shall not discriminate in any way as to the admission to or membership in the Union, or otherwise, against any persons who are now, or hereafter may be, employed or be restored to or reinstated in employment by the Company, provided such persons meet the requirements of the Union constitution and by-laws as to eligibility for membership.

*Section 3:* Both the Company and the Union recognize that neither membership nor non-membership in the Union is a requirement for the obtaining or retaining of employment with the Company.

*Section 4:* The Company agrees to honor such monthly dues deduction authorization as may be hereafter executed by employees within the bargaining unit in favor of the Union, it being understood that the Company assumes no responsibility for the legality of such authorizations, and it

furnishes the Company with satisfactory evidence or medical certificate of such fact, the Company will then grant such additional sick leave as may be consistent with the nature of the continuing disabling illness or accident, not exceeding additional periods of thirty (30) days each.

*Section 4:* An employee who becomes ill or disabled and is unable to work and makes proper report of his illness or disability to the Company will, upon approval by the Company, receive sick leave with pay as follows:

(a) During the first three (3) months of service—no paid sick leave.

(b) During remainder of calendar year, pro-rata sick leave as follows:

0 months	10 days
1 month	9 days
2 months	8 days
3 months	7 days
4 months	6 days
5 months	5 days
6 months	4 days
7 months	3 days
8 months	2 days
9 months	1 day

(c) Every calendar year thereafter—10 days.

The Company retains the right to require satisfactory evidence or medical certificate to prove ability or inability to work.

Employees who work regularly 20 hours or more per week are considered full time employees and shall be entitled to paid sick leave benefits as provided above, on the basis of the number of hours each day regularly worked. Employees who regularly work less than 20 hours per week are considered part time employees and are not eligible for any paid sick leave.

*Section 5:* In the event of the death of a member of the immediate family of a full time employee, regularly work-

sence for such employees as may be delegated by the Union to attend State and National conventions; provided, that the aggregate of such leaves shall not exceed four (4) persons in number and three (3) weeks in length. Within these limits the Union may use such leaves of absence as it sees fit; provided, that no more than two (2) employees of the Company shall be absent upon such leaves at the same time. The Union is required to give one week's advance written notice of the identity of the employees for whom such leaves of absence are desired, and seniority in respect to promotions and in respect to choice of vacation dates as to such employees shall not be affected by such leave of absence.

*Section 3:* Leave of absence shall be understood to mean an absence from work without pay, requested by an employee and consented to by the Company in advance, for an agreed period of time and for good cause. Any absence from work on the part of an employee without such prior agreement and consent by the Company, or his failure to report to work at the end of such leave, may, at the option of the Company, be treated as a "quitting" on the part of such employee.

Requests for leave of absence must be submitted by the employee to the Department Manager. The Company retains the exclusive right to approve or disapprove requests for leave of absence. Seniority will not accumulate during a leave of absence granted for reasons other than disabling illness or accident of the employee.

In the event of disabling illness or accident, the employee is requested to inform the Department Manager by 9:00 o'clock A.M. of the first day of absence for such cause in order to prevent possible termination of employment. Sick leave will then be allowed automatically for a period of time consistent with the nature of disabling illness or accident, but not exceeding thirty (30) days. The Company maintains the right to require satisfactory evidence or medical certificate to prove inability to work. If, at the end of the automatic sick leave provided above, the employee is still unable to work because of disabling illness or accident and

- (a) Sickness or injury, proved by a physicians' certificate or absence due to sickness when excused by an authorized representative of the company of a combined duration not exceeding six (6) weeks during first year of employment or two (2) months after one (1) year of employment.
- (b) Jury duty or compulsory appearance in court.
- (c) Vacations in accordance with the provisions of this Section.
- (d) Leave of absence of two (2) weeks or less during any one year.
- (e) Leave of absence of three (3) days for death in immediate family.

Leave of absence in excess of two (2) weeks for reason other than disabling illness or accident will reduce vacation rights by one-half ( $\frac{1}{2}$ ) day for each such excess two (2) weeks of absence. Leave of absence due to sickness, injury, or accident in excess of the period stipulated in part (a) above will reduce vacation right at the option of the Company by one (1) day for each additional month of absence. The Company's record in respect to last employment date and continuous service shall be conclusive.

Vacations will be assigned by the Department Manager and insofar as possible, consideration will be given to the employee's selection of the vacation time. Employees with seniority will have first choice for vacation dates, which choice will be granted provided the operating efficiency of the Company is not, in its opinion, thereby impaired, but the Department Manager shall not be required to consider seniority for the second week of vacation if an employee desires to split the vacation, or if after selection is made, a change in schedule is desired.

The Company reserves the right to schedule vacations in accordance with the conditions and requirements assuring uninterrupted operating service.

Section 2: During the life of this agreement, the Company agrees, during each calendar year, to grant leaves of ab-

started in December of the previous calendar year receive 2 weeks vacation with pay upon completion of eleven months of continuous service.

Employees whose last date of continuous employment began earlier than in the preceding calendar year receive two (2) weeks vacation with pay which may be taken any time in the applicable calendar year during the vacation period stated above.

An additional day of vacation is allowed in lieu of a paid holiday within a vacation period. Vacations must be taken in periods of not less than five (5) consecutive working days. No more than two weeks of paid vacation is allowed during any-one calendar year. Vacations are not cumulative from year to year.

Pay in lieu of vacation will be allowed upon termination of employment to employees whose date of continuous employment began earlier than in the preceding calendar year, provided the employee has given advance notice of at least two full weeks of his intention to terminate his employment and such termination of employment is effective after March 31st of the current year.

However, any vacation right that has been earned by employees whose continuous employment began in the preceding calendar year will be paid in lieu of vacation if termination of services occurs before the vacation has been taken. No pro-rata vacation rights will accrue at any time and any vacation rights which a continuation of services might have secured will cease upon termination from the company's services.

"Continuous Service", when used in determining vacation rights shall mean the period of uninterrupted employment from the date of last employment. The following interruptions resulting in absence from work shall not have detrimental effect upon the employee's "continuous service" record and shall be considered as time worked for the purpose of this section which is devoted exclusively to vacations:

pay for such days at the regular rate.

- New Year's Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Christmas Day
- The afternoon of Christmas Eve
- The afternoon of New Year's Eve

and if any such day (other than Christmas Eve or New Year's Eve) falls on a Sunday, then the following Monday shall be observed as the Holiday.

In the event Christmas Eve and New Year's Eve fall on either a Saturday or a Sunday, the afternoon of the preceding Friday shall be observed as such half-holidays.

Section 6: Employees of this Company shall be paid at the regular rate for scheduled working time lost from employment with this Company on account of jury service.

### ARTICLE IX.

#### VACATIONS AND LEAVE

Section 1: Vacations with pay are granted after continuous full time service of one year. No vacations are granted to part time employees with less than twenty (20) hours of service per week. Employees with 20 hours or more per week of continuous service for one year or more shall be granted vacation credits on the basis of the number of hours each day regularly worked.

No vacation as provided in this article may be taken except during the period beginning April 1st and ending November 30th in any calendar year. Employees whose last date of continuous employment began in the preceding calendar year receive 2 weeks vacation with pay upon completion of the first year of continuous service; except that employees whose continuous service

## ARTICLE VII.

## WORK DAY AND WORK WEEK

The established work week shall consist of five consecutive days beginning on Monday, and the normal work day shall be eight hours of work which shall be consecutive except for a lunch period of one hour or less.

## ARTICLE VIII.

## WAGES

*Section 1:* Commencing with the pay period August 20, 1951, employees within the Classifications B, C, D & E shall receive a wage increase of ten percentum (10%) of their wages as of the date of this contract, less all increases, other than promotion increases to the next higher job classification, received since January 1, 1951.

*Section 2:* The Company shall pay the employees covered by this agreement wages in accordance with Exhibit "A" attached hereto and made a part hereof (hereinafter called the "regular rate").

*Section 3:* For work performed not in excess of forty (40) hours per work week, the Company shall pay wages at the regular rate.

*Section 4:* For any work performed in excess of forty hours per work week, the Company shall pay wages at one and one-half times the regular rate. When overtime work is required in any department or section thereof such overtime work shall be offered among the employees of such department or section thereof equally, provided, however, that the Company reserves the right to put other employees of its own choosing on such work, if, in the opinion of the Company, such act becomes necessary.

*Section 5:* Any employee required to work on the following days shall receive pay at the rate of two times the regular rate, and if not required to work on such days, shall receive

the length of uninterrupted employment with the Company commencing with the latest date of hiring. For the purpose of promotions, seniority shall be based upon length of continuous service in the applicable job classification. The Company's record in respect to last employment date and length of service on each job classification shall be conclusive.

New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first three (3) months of actual employment and will receive no continuous service credit during such period. At the end of the probationary period the employee's seniority shall be retroactive to the date of hire.

An employee who leaves the employ of the Company as a result of his induction into the Armed Forces of the United States, shall upon reinstatement on the Company's active payroll be given continuous service credit for the time served in the Armed Forces. Continuous service credit shall discontinue upon voluntary re-enlistment in the Armed Services. It is understood that the Company shall reinstate as required by law, employees who left their positions upon induction into the Armed Forces of the United States.

Where a "Temporary employee" or a "Part-time employee" is permanently employed on full time, the aggregate of his temporary or part-time period shall not be added to his period of regular employment in determining length of service, but his service shall date from the beginning of his most recent full time employment.

"Continuous Service Credit" shall be broken and seniority lost by the quitting, or discharge, or by the involuntary lay-off of an employee for a period of twelve months. Any employee hired for a previously agreed to limited period of time, or for the specific duration of a previously specified job assignment breaks continuous service and loses seniority upon completion of that period or assignment.

Seniority shall be defined as the length of service since the last date of hiring. Length of service with the Company is

#### SENIORITY

### ARTICLE VI.

Section 2: An employee who resigns or is laid off because of lack of work will, upon his request, be furnished with a statement by the Company as to the character of his service with the Company.

Section 1: The Company agrees that upon discharge of any employee, upon demand from such employee, it will furnish to such employee a written statement as to the reason or reasons for discharge, and that such discharged employee may present as a grievance, under the machinery hereinafter provided, his dissatisfaction with such discharge. If the final determination of such grievance is that such discharged employee was unjustly discharged, such employee shall be reinstated immediately to his former position without loss of seniority rank and shall be entitled to compensation for time actually lost in each work week at his regular rate of pay.

#### DISCHARGE OF EMPLOYEES

### ARTICLE V.

Where the service record, physical fitness, application, ability to perform the duties of a higher position, skill and efficiency of the employees recommended for promotion or demotion are relatively equal, seniority as outlined and defined in the succeeding article numbered VI hereof will be considered as the controlling factor in the approval or disapproval of such promotions and demotions.

chairman, and he shall hear only such evidence and arguments as previously presented at such meetings. Said impartial chairman shall have the right to make recommendations and suggestions to both sides, but shall not have the power to vote, and neither side shall be obligated to accept his recommendations or suggestions. The cost of such impartial chairman shall be borne equally by both the Company and the Union.

of the Union may, within five (5) days from receipt of such decision of the Company's Secretary, above provided, request in writing, addressed to the Company's Secretary, a review of such decision by a committee hereinafter provided.

Such committee to review such decisions on promotions and demotions shall be set up and continued in existence throughout the term of this contract, consisting of two (2) members designated by the Company and two (2) members designated by the Union, which Union designated members shall be employees of the Company within the bargaining unit. One of the company designated representatives shall act as chairman of the committee. All decisions of the committee shall be made by majority vote. Such voting shall be by secret ballot, each member of the committee being entitled to one vote only. The Union shall be entitled to have present, in an advisory capacity only, at such meetings, its local business representative, and an international representative, who shall be entitled to participate in the discussions, but shall not be entitled to any vote. In addition, there shall be present the department manager and union steward of the department involving the person in question, who both shall be entitled to participate in the discussions, but shall not be entitled to any vote. All decisions of such committee so reached by majority vote shall be recorded in minutes to be kept of such committee's meetings and shall be final and binding upon both the Union and the Company. Union shall be furnished with a copy of such minutes. In the event of a tie vote, the company's decisions with respect to such promotion or demotion shall stand. However, if the Union is still dissatisfied with such promotion or demotion, it shall have the right, within five (5) days from the date of the meeting of the committee at which the tie vote occurred, to request a United States District Judge for the Southern District of Texas (the appointing Judge to be rotated in order of seniority) to appoint an impartial chairman to meet with the committee above mentioned, at a time and place convenient to all. Such appointed, impartial chairman shall replace the representative who previously acted as

The right to select and hire, to discharge, or discipline for cause, and to maintain discipline and efficiency of employees, and to determine the schedules of work is recognized by both Union and Company as the proper responsibility and prerogative of management, to be held and exercised by the Company in a fair and just manner, and while it is agreed that an employee, feeling himself to have been aggrieved by any decision of the Company in respect to such matters, or the Union in his behalf, shall have the right to have such decision reviewed by top management officials of the Company under the grievance machinery hereinafter set forth, it is further agreed that the final decision of the Company made by such top management officials shall not be further reviewable by arbitration.

#### ARTICLE IV.

##### PROMOTIONS AND DEMOTIONS

For the purpose of this article, the term "promotion" means the elevation of an employee from one lettered classification in the attached wage promotion plan to the next higher lettered classification, and the term "demotion" means the lowering of an employee from one lettered classification in such attached wage promotion plan to the next lower lettered classification.

All promotions and demotions shall be forthwith made by the Company at its will, giving the business representative of the Union prompt notice thereof. Any employee feeling himself to have been aggrieved by the decision of the Company in respect to any promotion or demotion, or the Union in his behalf, shall have the right to file his or its dissatisfaction with such decision as a grievance under the grievance machinery hereinafter set forth, but not including arbitration.

If, upon receipt of the decision of the Company's Secretary provided for in Section 5(c) of Article XII of this Contract, the employee, or the Union in his behalf, shall be dissatisfied with such decision, the business representative

## ARTICLE II.

## BARGAINING

*Section 1:* The Company, through its appointed representatives, will recognize the bona fide representatives of Office Employees International Union, Local No. 27, as the exclusive representative of all the said employees at its Home Office in Galveston, Texas, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

*Section 2:* The Company will, pursuant to the provisions hereinafter contained, governing "grievances" provide for the handling on the Company's part of such disputes or disagreements as to interpretation and administration under the contract, presented as grievances, as shall arise during the term of the contract.

*Section 3:* The business representative of the Union shall have access only to the office of such representatives of the Company as shall be designated to receive him for the purpose of presenting grievances to such representative. It is, of course, agreed that the Union will keep the Company advised as to the identity of its business representative and that the Company will keep the Union advised as to the identity of the Company representative designated to discuss such matters with him.

## ARTICLE III.

## FUNCTIONS AND PREROGATIVES OF MANAGEMENT

Nothing in this agreement shall be deemed to limit or restrict the Company in any way in the exercise of the customary functions of management, including the right to make such rules not inconsistent with the terms of this agreement relating to its operation as it shall deem advisable, and the right to hire, suspend, discharge, or otherwise discipline an employee for violation of such rules or for other proper and just cause.

## APPENDIX A

### ARTICLES OF AGREEMENT

BETWEEN

AMERICAN NATIONAL INSURANCE COMPANY

AND

OFFICE EMPLOYEES INTERNATIONAL UNION,

LOCAL NUMBER 27

OF THE

AMERICAN FEDERATION OF LABOR

This agreement is made by and between the American National Insurance Company, hereinafter referred to as the Company, and the Office Employees International Union, Local No. 27, hereinafter referred to as the Union. The contracting parties desire that a maximum of well-being, contentment, and good will should result from the friendly deliberation on and fair disposition of all problems arising in the management-employee relationship, to the end that maximum efficiency may be maintained.

## ARTICLE I.

### RECOGNITION

The Company recognizes the Union as the sole collective bargaining representative for all employees in the Home Office of the Company at Galveston, Texas, but excluding guards, secretaries to department heads and executives, agents, building and maintenance employees, professional employees, department heads and all other supervisors as defined in the Labor-Management Act.

wrought. National Labor Relations Board v. Thompson Products, Inc. (6 Cir.), 97 F. (2d) 13, 15."

### Conclusion

It is respectfully submitted that the opinion and judgment of the United States Circuit Court of Appeals for the Fifth Circuit, to which this certiorari is directed, is, in law and on the facts of the case, entitled to and should be, by this Honorable Court, affirmed, and Respondent, American National Insurance Company, respectfully so prays.

M. L. Cook,

A Member of the Bar of the Supreme Court of the United States,

*Attorney for Respondent,*

AMERICAN NATIONAL INSURANCE

COMPANY,

Cotton Exchange Bldg.,

Galveston, Texas,

Louis J. DIBRELL,

CHAS. G. DIBRELL, JR.,

Of the Firm of Dibrell, Dibrell & Greer,

*Attorneys for Respondent,*

AMERICAN NATIONAL INSURANCE

COMPANY,

Medical Arts Bldg.,

Galveston, Texas

U.S.C.A. Par. 160 (e) which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

"We are bound by the Board's findings of fact as to matters within its jurisdiction, where the findings are supported by substantial evidence; but we are not bound by findings which are not so supported. 29 U.S.C.A. Par. 160 (e). (f); Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U.S. 142, 57 S. Ct. 648, 650, 81 L. Ed. 965. \* \* \* Substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. Cf. Pennsylvania R. Co. v. Chamberlain, 288 U.S. 333, 339-343, 53 S. Ct. 391, 393, 394, 77 L. Ed. 819; Appalachian Electric Power Co. v. National Labor Relations Board, 4 Cir., 93 F. (2d) 985, 989.

"Substantial evidence' means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences and deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction.

"The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be

displayed that completely neutral attitude which it understands is required of it both by law and common sense. During the many months covering the Company's dealing with the Union from the date the organizational campaign was originally started down to the time of the Hearing before the Trial Examiner and even since that time, the Company has been accused of but one discriminatory discharge of an employee within the unit consisting of more than 700 people and as to that accusation the Company was absolved by the Trial Examiner. Of the 100 or more supervisory and executive employees of the Company in position to attempt coercion of its other employees, only one has ever been accused by the Union, much less found guilty, of such conduct and that occurrence was prior to the election. The responsible heads of the Company have made every effort to insure that the organizational rights of its employees were scrupulously observed and the Company's negotiators have to the best of their ability attempted likewise to scrupulously observe all lawful requirements of the Act in their bargaining with the Union. Upon what factual basis then does the suspicion of anti-unionism pervading the Intermediate Report and the Decision and Order arise, and, in any event, is suspicion ever a lawful justification for a factual finding? Long before the 1947 amendment to the Act, JUDGE GARRETT, speaking for the 10th Circuit Court in NATIONAL LABOR RELATIONS BOARD v. UNION PACIFIC STAGES, 99 F. 2d 153, at page 177, had the following to say as to the substantiality of the evidence required to support Board Findings of Fact.

"It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10(e) of the Act, 49 Stat. 453, 29

being understood further that nothing herein shall ever be construed as requiring any employee to execute such authorization or continue membership in the Union as a condition of employment.

## ARTICLE XI.

### STRIKES, AND LOCKOUTS

There shall be no strikes, slow-downs or work stoppages of any kind during the life of this agreement, and there shall be no lockout of employees by the Company during said term.

## ARTICLE XII.

### GRIEVANCES

*Section 1:* The Union may designate for each department a Union steward who may call to the attention of his department head any question of employment conditions that shall arise in the department. Discussions between Union Steward and department head shall be at such time and place as not to interfere with work in the department.

*Section 2:* The Union agrees to designate and to keep the Company advised of the identity of a steward for each department. It is agreed that the steward for each department so designated shall confine his or her activities to his own department.

*Section 3:* Any employee or group of employees who believes that he or they have a justifiable request or complaint, shall discuss the request or complaint with his or her immediate superior in an effort to settle same, and in such discussion such employee or group of employees may have the assistance of the steward in the department in which such request or complaint arises.

*Section 4: Definition of Grievance.* "Grievance" as used in this agreement is limited to a complaint which has not been settled as a result of the discussion required in Section 3 hereof, or which involves the interpretation or application of, or compliance with, the provisions of this agreement.

### *Section 5: Grievance Procedure.*

(a) A grievance which has not been settled within 5 days as a result of the discussion required in Section 3 hereof, to be considered further must be filed promptly in writing with the employee's Assistant Department Head stating fully the nature of the grievance and the grounds for complaint or dissatisfaction. The Assistant Department Head shall answer the grievance within 5 days from date of presentation in writing, signing and dating his reply and returning one copy thereof to the employee or the steward. If the Assistant Department Head's decision is not appealed within 5 days, the grievance shall be considered on the basis of the decision made and shall not be eligible for further appeal.

(b) In order for a grievance to be considered further, it shall be appealed in writing to the Department Manager within 5 days, from the date of the Assistant Department Head's written reply. An appealed grievance shall be discussed in an attempt of settlement at a mutually convenient time between the steward or employee and the Department Manager, and answered within 5 days from appeal. The Department Manager's decision, in writing, after signing and dating it, shall be given to the steward or employee. If the Department Manager's decision is not appealed within 5 days, the grievance shall be considered settled on the basis of the decision made and shall not be eligible for further appeal.

(c) In order for a grievance to be considered further, written notice of appeal by the business representative of the Union shall be served to the Company's Secretary, or his delegated representative, within 5 days of the date of the Department Manager's written decision. Discussion of the appealed grievance shall take place at the earliest date of mutual convenience following receipt of the notice of appeal, but not later than ten (10) days after notice is received by the Company's Secretary, or his delegated representative unless by mutual agreement a different date for disposition is agreed upon.

Grievances discussed in such meetings shall be answered in writing by the representative of the Company within 10 days after the date of such meeting; unless by mutual agreement a different date for disposition is agreed upon. Whenever either party concludes that further meetings can not contribute to the settlement of the grievance, the dissatisfied party may, by written notice within 10 days from the date of the written decision of the last previous meeting, appeal the grievance to arbitration, provided the grievance is subject to review by arbitration under the term of this contract.

*Section 6:* If either party shall elect to submit a grievance to arbitration, it shall give written notice to the other party of intention to arbitrate. Such notice shall contain a statement specifying the grievance. Upon receipt of any such notice, the parties shall, at the earliest date of mutual convenience, confer in an effort to select by mutual consent, an impartial board of arbitration.

The board of arbitration shall consist of one arbitrator appointed by the Union and another by ~~the~~ Company, and a third appointed by the first two arbitrators. In the event that the first two arbitrators are unable, within 10 calendar days, to agree on the appointment of the third arbitrator, such third arbitrator shall be appointed by one of the United States ~~District~~ Judges for the Southern District of Texas, such appointing Judge to be rotated in order of seniority.

The expense incident to the appointment and services of the third arbitrator shall be borne equally by the Union and the Company.

*Section 7:* Nothing in this Article shall be construed to deprive any individual employee or group of employees of their right at any time to present grievances to the Company or to have such grievances adjusted without the intervention of the Union, as long as the adjustment shall not be inconsistent with the terms of this contract, and provided the Union is given notice and opportunity to be present at such adjustment.

*Section 8:* Whenever the word "day" or "days" is used in this Article XII, it shall mean working days, that is to say, Monday through Friday of each week.

### ARTICLE XIII.

It is agreed that the Union shall be furnished space for the posting of proper notices, the location and area of such space to be agreed upon between the Company and the Union.

### ARTICLE XIV.

#### CONDITIONS

This agreement is subject to the provisions of existing laws, regulations, applicable Executive Orders, and other orders of duly constituted authorities of the United States and the State of Texas, which are now and may hereafter be in force during the term of this agreement.

### ARTICLE XV.

#### PENSION PLAN

The Pension Plan and Group Insurance Benefits offered by the Company to the Employees are hereby ratified and approved by the Union.

### ARTICLE XVI.

#### TERM

This agreement shall remain in full force and effect until August 10, 1953, and provided that unless one party shall give written notice to the contrary to the other party not later than sixty (60) days prior to such expiration date, this agreement shall be automatically renewed for a period of one year from such expiration date. Unless similar notice be given by one party to the other such agreement as so renewed shall be automatically renewed for another period of one year.

In the event the adjusted Series Consumers Price Index (B.L.S. Cost of Living Index) increases from 185.2 on June 15, 1951, to 200.2 on June 15, 1952, this contract may be reopened by the Union on August 10, 1952, for the purpose of negotiating wages only; provided, the Union shall give written notice to the Company of its desire to so reopen at least thirty (30) days prior to August 10, 1952.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 10th day of August, 1951.

AMERICAN NATIONAL  
INSURANCE COMPANY

By: L. Mosele  
Secretary-Comptroller

OFFICE EMPLOYEES  
INTERNATIONAL UNION  
LOCAL NO. 27, A. F. OF L.

Emily Moses  
Olga Perez  
Shirley Dial  
L. J. Gallagher

## ANICO WAGE PROMOTION PLAN

Job Class	Starting Salary	3 Mos	6 Mos	12 Mos	1½ Yrs	2 Yrs	2½ Yrs	3 Yrs	3½ Yrs	4 Yrs	4½ Yrs	5 Yrs	6 Yrs	7 Yrs	8 Yrs	9 Yrs	10 Yrs	11 Yrs
A	\$130																	
B	130	135	140	145	150	155		160		165								
C	140	145	150	155	160	165		170		175		180	185	190				
D	160		165	170	175	180	185	190	195	200	205	210	220	230	240	250	260	270
E	190		200	210	220	230		240		250		260	270	280	290	300	310	320

### *Merit Rating Score Necessary for Salary Increases*

In addition to the required length of service shown in the wage promotion plan, LOMA Standard merit rating scores as indicated below are necessary in order to qualify for the salary increases under the Wage Promotion Plan:

<i>Job Classification</i>	<i>If Salary is:</i>	<i>Merit Rating Score required to qualify for next higher wage bracket</i>
B	\$130.00	Automatic
B	135.00	Average
B	140.00	Slightly above average
B	145.00	Moderately above average
B	150.00	Considerably above average
C	140.00	Automatic
C	145.00	Average
C	150.00	Average
C	155.00	Slightly above average
C	160.00	Slightly above average
C	165.00	Moderately above average
C	170.00	Considerable above average
D	160.00	Slightly below average
D	175.00	Average
D	190.00	Slightly above average
D	210.00	Moderately above average
D	230.00	Considerably above average
E	190.00	Slightly below average
E	205.00	Average
E	225.00	Slightly above average
E	245.00	Moderately above average
E	265.00	Considerably above average
E	295.00	Distinctly superior

### *Minimum Merit Rating Score Requirement*

All job classifications require a minimum merit rating LOMA standard score comparable to a rating of "slightly below average". Employees are expected to maintain the necessary merit rating grades which are needed for the applicable salary scale. Where the latest rating produces a score that is below the applicable salary scale, the company will so inform the employee, and will explain the reasons for the lower rating. The company reserves the exclusive right to put the employee on a period of probation, or to reduce the salary to the rate applicable for the corresponding merit score, or to demote to the next lower job classification with a reduction in the rate of pay, or to discharge the employee at the expiration of the probationary period.

### *Special recognition*

The company will give consideration to special recognition in the rate of pay within the maximum rate for job classifications "C" "D" and "E" where distinctly superior ability and job performance are in evidence.

### *Promotions to next higher job classification*

In addition to the company's rules and requirements governing promotions, the following conditions must be met:

From A to B Requirement of 6 months continuous service on the "A" classification job and a minimum merit rating score of "slightly above average". The employee must submit and successfully pass the company's written test for "B" classification jobs.

From B to C Requirement of 3 months or more of continuous service on "B" classification job and a minimum merit rating score of "moderately above average". The employee must submit and pass successfully the company's written test for "C" classification jobs. A salary in-

crease of \$5.00 per month is allowed upon the official promotion; thereafter, all subsequent salary increases in the new wage bracket and the new job classification are dated from the official date of the promotion.

From C to D Requirement of 3 months of continuous service on "B" classification job and 6 months of continuous service on "C" classification job, or 9 months of continuous service on "C" classification job; and a minimum merit rating score of "moderately above average". The employee must submit and pass successfully the company's written test for "D" classification jobs when required. A salary increase of \$10.00 per month is allowed upon the official promotion; thereafter, all subsequent salary increases in the new wage bracket and the new job classification are dated from the official date of the promotion.

From D to E Requirement of 1½ years of continuous service on "D" classification job and a minimum merit rating score of "considerably above average". A salary increase of an amount that is the difference between the employee's rate of pay before promotion and the next higher wage bracket in the "D" wage promotion plan. Thereafter all subsequent salary increases in the new wage bracket and job classification are dated from the official date of the promotion.